



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein she sought a Monetary Order pursuant to section 67 for money owed or compensation for damage or loss under the *Residential Tenancy Act, Regulation*, or tenancy agreement in the amount of \$1,100.00, which is equivalent to one month's rent in addition to recovery of the filing fee.

Both parties appeared at the hearing. The Landlord was represented by her son, A.A. and the Tenant appeared on her own behalf. Introduced in evidence was a letter from the Landlord authorizing her son to act as her agent. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

### Background and Evidence

The Tenant testified that she and her boyfriend M.O. moved into the rental unit on July 1, 2014. She stated that no tenancy agreement existed. She stated that monthly rent was payable in the amount of \$1,100.00. She testified that she paid a security deposit of \$550.00 which she confirmed was returned to M.O. after the tenancy ended. Introduced in evidence was a copy of a cheque written to M.O. dated July 31, 2014 in the amount of \$550.00.

The Tenant testified that the tenancy ended on July 31, 2014. She stated that she and her boyfriend, M.O., had a “domestic” on July 13, 2014 which resulted in police attendance. Initially she testified that she said that she was “removed for questioning”; later in her testimony she confirmed that she was charged with assault and released on the condition that she have no contact with M.O. and that she not attend the rental unit.

The Tenant further testified that M.O. told her he was evicted and that he was only given two weeks’ notice to move out by the Landlord. The Tenant stated that the “no contact order was lifted too late”, and by the time she was able to return to the rental unit, M.O. had already moved out. The Tenant requested compensation in the form of one month’s rent, or \$1,100.00, claiming that the Landlord did not provide her and M.O. with 30 days’ notice.

The Tenant did not state when the no contact order was “lifted” or when she attempted to return to the rental unit.

M.O. did not appear at the hearing.

The Landlord’s agent, A.A., testified that M.O. called the police because the Tenant violently assaulted him leaving him with black eyes and bruises. He further stated that the Tenant was taken away by three police officers, not for questioning, but because she was charged with assault. A.A. further testified that M.O. asked that the Tenant be prohibited from having any contact with him, or attending the rental unit.

A.A. further testified that the Tenant M.O. informed the Landlord he wished to end the tenancy and asked to be permitted to vacate the rental unit by July 31, 2014. A.A. stated that he agreed to M.O.’s request, and M.O. voluntarily vacated the rental unit with all of his possessions.

A.A. testified that in August the Tenant informed him that the restraining order had been lifted and that she was ready to return to the rental unit. A.A. stated that he informed the Tenant that M.O. had already moved out and that the rental unit had been re-rented. A.A. also informed the Tenant that the security deposit had been returned.

### Analysis

Section 44(1)(d) of the *Residential Tenancy Act* provides that a tenancy ends when a Tenant vacates or abandons the rental unit. In this case, the Tenant, M.O., vacated the rental unit on July 31, 2014. In doing so, he ended the tenancy for both Tenants.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Tenant has the burden of proof to prove their claim.

The Tenant failed to provide any evidence of any damage or loss incurred or any proof of the actual amount required to compensate her for any such claimed loss.

Further the Tenant failed to prove the alleged damage or loss occurred due to the actions or neglect of the Landlord. She was prohibited from attending the rental unit due to a no contact order made as a result of an altercation between herself and M.O. While she alleged the Landlord evicted M.O., he did not appear at the hearing. The Landlord's Agent, A.A., testified that it was M.O. who requested an end to the tenancy and that M.O. voluntarily vacated the rental. Where one party provides a version of events in one way, and the other party provides an equally probable version of events,

without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In all the circumstances and on a balance of probabilities I find the Tenant has failed to prove her claim. As she has been unsuccessful, her request to recover the filing fee is also dismissed.

### Conclusion

The tenancy ended when M.O. vacated the rental unit on July 31, 2014. The Tenant failed to prove she suffered any loss as a result of the Landlord's actions or neglect. The Tenant's claim is dismissed in its entirety.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 18, 2015

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Residential Tenancy Branch

