



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for a monetary order.

Both parties attended the hearing. The tenant had benefit of assistance by their daughter as interpreter. Both parties were given opportunity to present all relevant evidence in respect to the claim and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence in this matter.

Both parties acknowledged receiving the evidence of the other when they exchanged evidence for a hearing on June 22, 2016, unrelated to this matter.

The landlord testified that the evidence they advanced for *this application* had already been submitted in the earlier matter of June 22, 2016. The landlord's evidence was explained to the tenant and they confirmed it was already in their possession. In discussion with the parties, they both confirmed, that in respect to *this application* the only relevant evidence supporting *this application* is in possession of both parties and consists largely of the tenant's application documents and of a 1 page document signed by the parties on September 04, 2015 titled *RE: Agreement between landlords and tenants*. I am satisfied from the testimony of both parties that each has received from the other all evidence relevant for *this application*.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

## **Background and Evidence**

The relevant and undisputed evidence in this matter is as follows. The tenancy pursuant to a written tenancy agreement began May 01, 2015 and has since ended. Rent in the amount of \$2300.00 was payable in advance on the first day of each month.

Both parties agree the tenant paid all the payable rent for November 2016 in the amount of \$2300.00.

The parties agree that on November 16, 2015 the rental unit was severely damaged by fire and was rendered uninhabitable. As a result, the tenant had to seek alternate accommodations on the date of the fire. A subsequent fire investigation concluded the fire started in the kitchen and was determined to be accidental, but none the less as the result of the conduct of the tenant.

The parties further agree that on September 04, 2015 they each mutually signed a 1 page document titled - *RE: Agreement between landlords and tenants* - in respect to the tenancy. The landlord testified the agreement is valid. The tenant testified they rely on the following wording of the agreement which in relevant parts states as follows:

*(the parties) agree to give (tenant) a free month to live in the property (dispute address). So (tenant) can live in the property without paying the rent for a full month. – as written.*

*(the parties) all agree that (tenant) can leave the property anytime he wants even before the end of the contract and he will be given a free month as stated above. – as written.*

Both parties agree the agreement was to establish their mutual understanding that, despite the fixed term nature of the agreement, the tenant could choose when they vacated, and when doing so, would receive a month of occupancy without the requirement of rent. The parties additionally agree the tenant was not given a free month of occupancy upon leaving the rental unit.

The tenant argues the landlord owes them the equivalent of one month's rent of \$2300.00 pursuant to the above agreement. In addition, the tenant seeks recovery of the balance of November 2015 rent following the fire on November 16, 2015.

## **Analysis**

Based on the evidence of both parties I find as follows. **Section 44** of the Act addresses how a tenancy ends, and in relevant part to this application, states as follows:

**How a tenancy ends**

**44** (1) A tenancy ends only if one or more of the following applies:

- (e) the tenancy agreement is *frustrated*;
- (f) the Director orders that the tenancy is ended.

I find that resulting from the fire of November 16, 2015 the tenancy agreement became *frustrated* and as a result the tenancy effectively ended on that date. *The Frustrated Contract Act* and the legal doctrine of *frustration of contract* apply to tenancy agreements. A contract (in this matter the tenancy agreement) is *frustrated* where, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract by either party as originally intended is now impossible. In this matter the rental unit was sufficiently consumed by fire so as to render it uninhabitable with the situation beyond the control of either of the parties. I accept the evidence pertaining to the fire. The circumstances clearly affected the nature, meaning, purpose, and consequences of the tenancy agreement so far as either or both of the parties are concerned. The result rendered the rental unit unusable for the purpose intended and contracted / agreed under the tenancy agreement. As a result, I Order the tenancy ended November 16, 2015 solely pursuant to Section 44(1)(e) of the *Residential Tenancy Act*.

I accept the parties' written agreement of September 04, 2015 as a mutually agreed addendum to the tenancy agreement and as such I find it is part of the tenancy agreement. I note the particulars of the agreement are in respect to the tenancy, the terms of the tenancy, the transaction of rent; and, the September 04, 2015 agreement alters material terms of the tenancy such as the fixed term nature of the tenancy agreement. I find the agreement is a valid extension of the original tenancy agreement.

I find that the September 04, 2015 agreement could have been more clearly written; however, I accept the evidence of both parties the agreement was to establish their mutual understanding the tenant could choose when they vacated within the fixed term period of the tenancy and on their determination would receive a month of occupancy rent free.

In light of the events of November 16, 2015 I find the contractual tenancy became *frustrated* with both parties unable to fulfill their respective ends of the contract. The

contractual tenancy in its entirety came to an end, including all terms and obligations governed by the contract. I find the landlord became unable to provide one month of occupancy rent free as intended by the parties' agreement, and as a result the tenant is not entitled to this portion of their claim, and it is therefore **dismissed**.

I find that as a result of the tenancy's end on November 16, 2015 pursuant to *Frustration* the landlord could not satisfy their obligation to provide occupancy for the remainder of November 2015. As a result the tenant is owed the balance of November 2015 pre-paid rent in the prorated sum for 14 days totalling **\$1073.33** [\$2300 x 14/30], and I grant the tenant this amount.

### **Conclusion**

**I grant** the tenant an Order under Section 67 of the Act for the amount of **\$1073.33**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: June 29, 2016

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Residential Tenancy Branch