



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MND MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. They confirmed that the Two Month Notice to End Tenancy dated October 25, 2016 to be effective December 31, 2016 and also the Application for Dispute Resolution were personally served on the tenant. I find that the tenant is served with the Application according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

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

Has the landlord has proved on a balance of probabilities that the tenant owes rent and some damages and the cost of the damages? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in August 2015, a security deposit of \$550 was paid and rent was \$1100 a month. The tenants received a Notice to End Tenancy October 25, 2016 because the home was sold and the new owner wanted to occupy it. They vacated the house at the end of November but left a couch in the basement and other items in the garage. The female tenant who attended the hearing said called the male landlord on November 16, 2016 to inform him they were vacating and he agreed he got the call. However, there was no Notice in Writing of their intention to vacate and some items were left behind.

The tenant said she expected the landlords would dump the basement couch and she thought someone was picking up the items in the garage. The female landlord said she informed the male tenant of the items left and he said he would only remove them if she returned his security deposit first. She told him that he had to remove the items before the return of a security deposit. The male landlord said he cleared out the garbage and items in the first part of December and took about 5 truckloads to the dump- a big job.

The tenants did not pay rent for November or December 2016 and the security deposit is still in trust. The landlord said they realize the tenants were entitled to one month free pursuant to the section 49 Notice but they are required under the Act to give written notice of when they will move out if it is before the effective date of the end of the tenancy given in the Notice. The landlord requests a monetary order for the following:

\$300: for unpaid August rent. In the hearing, the landlord said this was actually \$800 as the tenant had only paid \$300 in August 2016. The tenant said all the rent was paid according to her knowledge. Neither party provided any documents to support this claim although they stated the rent was a direct deposit to the landlord's account.

\$1100: for November rent because there was no written notice from the tenants.

\$100: gas and labour for dumping

\$25: dumping fees

\$100: filing fee

The tenant provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

#### **Monetary Order**

Section 51 of the Act provides that if the landlord gives the tenant notice under section 49, the tenant may end the tenancy early by (a) giving the landlord at least 10 days written notice to end the tenancy on a date that is earlier than the effective date of the notice, and (b) paying the landlord the proportion of the rent due to the effective date of the tenant's notice unless the tenant paid rent before giving the notice. Section 51 also states that a notice under this section does not affect a tenant's right to compensation under section 51 (one month free rent on a section 49 notice).

I find the tenant was entitled to one month free rent pursuant to the landlord's two month section 49 Notice. Since the tenant gave no **written** notice as required under section 50 to end the tenancy earlier, the one month free rent would apply to the last month of the tenancy, which is December 2016. I find also that the tenant was still occupying the unit in December as they left various items behind which the landlord had to remove. I find the landlord entitled to rent for November 2016 in the amount of \$1100.

In respect to the amount of unpaid rent claimed for August 2016, I find insufficient evidence that this rent was not paid. The onus is on the landlord to prove this rent was unpaid as the tenant denied her claim. The landlord submitted no proof such as bank

statements or receipts or other records which might support her claim. I dismiss the claim for unpaid August rent.

In respect to the damages claimed, awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the landlord's evidence credible that the tenants left items and garbage behind in the basement and garage and the landlord had to eventually dump them. The tenant did not deny that these items were left behind but said she thought someone would pick them up. I find the landlord entitled to \$125 as claimed for cost of labour, gas and dumping fee for 5 loads. Although he provided no invoices as he did the labour himself, I find the list of items included a couch, bed springs and garbage and his cost for this amount of removal is reasonable. I find the landlord also entitled to recover their filing fee.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

November rent	1100.00
Gas, labour, fee to dump garbage	125.00
Filing fee	100.00
Less security deposit (no interest 2016-17)	-550.00
<b>Total Monetary Order to Landlord</b>	<b>775.00</b>

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: April 05, 2017

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Residential Tenancy Branch