



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

On October 20, 2016, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and the Tenants attended the teleconference hearing. 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 to cross-examine the other party, and make submissions to me.

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

### Preliminary and Procedural Matters

The Tenant testified that she did not receive a copy of all of the Landlord's evidence. The Landlord testified that all the evidence was served in person. The hearing proceeded and the documents in dispute were not relevant or required in making this decision.

The Landlord testified that the security deposit was dealt with prior to the hearing and the claim to keep the deposit is withdrawn. The Landlord also withdrew a claim to be compensated for a bylaw ticket.

### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy was a fixed term tenancy from May 2016, to continue until October 31, 2016. Rent in the amount of \$1,600.00 was to be paid on the first day of each month. The Tenants paid the Landlord a security deposit of \$800.00.

The Tenants moved out of the rental unit on October 16, 2016.

The Landlord testified that in September 2016, the Tenants provided a written notice to end tenancy on October 31, 2016.

The Landlord testified that the Tenant failed to pay the rent that was owing under the tenancy agreement for the month of October 2016.

The Landlord is seeking \$1,600.00 for October 2016, rent.

The Landlord also seeks to recover the cost of the filing fee.

The Tenant testified that she did not pay the rent for October 2016. The rent cheque for the October rent bounced. She testified that she received a handwritten notice from the Landlord and believed that the Landlord wanted the Tenants to move out. The Tenant testified that she believed she was entitled to one month of free rent because the Landlord wanted to end the tenancy.

The Tenant provided a copy of a hand written note from the Landlord dated August 8, 2016. The Tenants confirmed that the Landlord did not serve a Notice to End Tenancy document on the tenants.

The Tenant provided a copy of the Tenant's Notice to end tenancy dated September 16, 2016, which states the Tenants are vacating the unit on October 31, 2016.

### Analysis

Section 51 of the Act states that a Tenant who receives a 2 Month Notice To End Tenancy For Landlord's Use Of Property under section 49 of the Act is entitled to receive the equivalent of one months rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant did not receive a 2 month Notice to End Tenancy from the Landlord.

I find that the Tenant were not entitled to receive the equivalent of one month's rent from the Landlord.

I find that the Tenants failed to pay the rent for October 2016, as required under the tenancy agreement.

The Tenants were not required to move out of the rental unit based on the Landlord's note. The Tenants could have filed for dispute resolution to have the merit of the note challenged. The Tenants ended the tenancy by moving out of the unit.

I find that the Landlord is entitled to a monetary order in the amount of \$1,600.00 from the Tenants.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,700.00 comprised of \$1,600.00 for October 2016, rent; and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$1,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

### Conclusion

The Tenants failed to pay the rent owing under the tenancy agreement and did not have the authority to withhold payment.

I grant the Landlord a monetary order in the amount of \$1,700.00.

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 27, 2017

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Residential Tenancy Branch