



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNR FF

### Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows

The application from the landlord requested:

- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and for money owed for damage or loss under the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both the landlord and the tenant appeared at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord explained that she had sent her application for dispute resolution package along with her evidentiary package to the tenant by way of Canada Post Registered Mail. The tenant acknowledged receiving these documents on, or around November 25, 2016. Pursuant to sections 88 and 89 of the *Act* the tenant is found to have been served with the landlord’s application and evidence.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order?

Can the landlord recover the filing fee?

### Background and Evidence

Testimony was provided by both parties that this tenancy began on September 1, 2015. The landlord stated that this was a fixed-term tenancy that was set to end on May 31, 2016. The parties had agreed in the residential tenancy agreement they signed that following this period of time, the tenancy could be extended a further three months, meaning the true end date would be August 31, 2016. Due to complications with a home that the tenant was building, the tenant explained that he required this additional time period and would be in occupancy of the rental unit until August 31, 2016. Further complications with construction of the tenant’s new home led

the tenant to offer the landlord a further month's rent for September 2016. The landlord agreed to extend the tenant's time in home, thus creating a periodic, month to month tenancy.

A copy of the residential tenancy agreement was submitted to the hearing as part of landlord's application for dispute resolution. Rent was set at \$1,500.00 per month and no security or pet deposit was collected by the landlord. The landlord testified that the tenancy ended on October 5, 2016 when the tenant vacated the rental unit. The tenant explained that in fact, he had vacated the rental unit on September 15, 2016. As proof of his move, the tenant submitted an invoice from a moving company indicating that he had vacated the rental property on September 26, 2016. The landlord disagreed with this date. In November 2016 a new tenant took possession of the rental unit.

The landlord seeks a Monetary Order of \$1,315.30 for unpaid rent for the month of October 2016. The landlord argued that the tenant had breached a term of their tenancy agreement. Specifically the landlord has cited clause 14(1) which requires the tenant to end a tenancy by giving the landlord 1 month written notice. This clause states:

The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice.

This clause when read in conjunction with section 45 of the *Act* provides that a tenant must end a periodic tenancy by giving the landlord 1 month notice to end a tenancy.

The landlord explained that she is seeking a Monetary Order of \$1,315.30. This amount reflects:

| Item                         | Amount     |
|------------------------------|------------|
| Unpaid Rent for October 2016 | \$1,500.00 |
| Less Appliance Invoice       | (-117.50)  |
| Less Lock Service Invoice    | (-67.20)   |

|                |                   |
|----------------|-------------------|
|                |                   |
| <b>Total =</b> | <b>\$1,315.30</b> |

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to a claim for a monetary award.

While I am satisfied that a violation of the *Act* occurred, in that a periodic tenancy was created by the tenant when he agreed to extend this tenancy beyond the fixed term date of August 31, 2016, I am not convinced that the landlord should be entitled to a full month rent as compensation. By all accounts, the relationship between the parties prior to this dispute had been convivial and the parties entered into this agreement to extend the rental of the property on an ad-hoc basis. It is evident both parties treated it in this manner with friendly emails being exchanged. With this in mind, I turn my attention to the *Act*, where Section 45 of the *Act* notes that a tenant must end a periodic tenancy by giving the landlord at least one month's notice. While the tenant has failed to do this, the landlord has failed to demonstrate how she has suffered any loss. Section 67 of the *Act* provides the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In addition, a landlord has a duty under section 7(2) of the *Act* that they have taken steps to mitigate or minimize the loss or damage being claimed.

No evidence was presented to the hearing that the landlord took steps to minimize her loss for this time period. *Policy Guideline #5* explains that where a party breaches a term of the tenancy agreement or the *Act*, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. It states, "The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring...efforts to minimize the loss must be 'reasonable' in the circumstances...The legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

The parties presented conflicting dates concerning when the actual move out date occurred, making it impossible to determine when this tenancy ended. It is apparent that both parties are somewhat at fault in this matter. It is unfortunate that a previously friendly relationship has turned sour. I will award the landlord half of the monetary award she is seeking. This is in

satisfaction of 2 week's rent for October 2016. If the tenant did in fact overhold the rental unit until October 5, 2016 then the landlord should be compensated for this. If the tenant did vacate the rental unit on September 26, 2016 as the invoice of his moving company stated, little evidence was presented on his part to establish when he gave notice of this move to the landlord and thus a violation of the *Act* occurred.

I will award the landlord a Monetary Order of \$657.65.

As the landlord was successful in her application, she may pursuant to section 72 of the *Act* recover the \$100.00 filing fee for this application.

### Conclusion

I issue a Monetary Order in the landlord's favour in the amount of \$757.65 against the tenant. The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord may recover this filing fee associated with this application. This is reflected in the Monetary Order above.

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 2, 2017

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Residential Tenancy Branch