



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNR MNDC MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent, damage to the unit or other loss as a result of this tenancy pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution and evidentiary materials for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage to the unit or other loss? Is the landlord entitled to retain all or a portion of the tenant's security deposit in (partial) satisfaction of the monetary order requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy was scheduled to begin on April 19, 2017. On April 7, 2017, the tenant paid a \$360.00 security deposit to the landlord and signed a residential tenancy agreement with a move-in date of April 19, 2017. On April 19, 2017, the landlord received a letter from the tenant stating that she would not move in to the rental unit.

The parties testified that the rental amount of \$720.00 payable on the first of each month was agreed upon.

The landlord testified that he made every attempt to accommodate. She described advertisements on the company website, a community posting board, several online rental sites as well as information to the other landlords in the area. The tenant testified that her move was complicated by a break-up in a relationship and a change in how many people were going to

live in the rental unit. She testified that she tried to notify the landlords earlier than April 19, 2017 but, despite several phone calls, she did not reach anyone at the landlord's office. Ultimately, she mailed them a letter.

The landlord sought to retain the tenant's security deposit towards his rental loss for April 19 – 30, 2017 and May 1 - 30, 2017. The landlord testified that the unit was re-rented on May 12, 2017. She testified that the new tenants intended to move in June 1, 2017 but she convinced them to move in sooner and reduce her loss as a result of the tenant's change of mind.

### Analysis

Section 16 of the *Residential Tenancy Act* indicates that “[the] rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.” Despite the tenant's arguments that the tenancy was not complete because she did not move in and did not do a condition inspection at move-out and that she did not ever receive the keys from the landlord, I find this tenancy had begun on April 7, 2017 – the date that the tenancy agreement was entered into.

Pursuant to section 44 of the Act, a tenancy ends when the tenant or landlord gives notice to end. Unless the parties enter into a mutual agreement to end tenancy, a tenant may end a tenancy by providing the landlord with notice at least one month prior to the effective (end of tenancy) date of the notice. Section 45 of the Act requires that a tenant give one month notice one day before the day of the month the rent is due under the tenancy agreement. Pursuant to section 44 and 45, the tenant's notice would result in an effective (end of tenancy) date of May 31, 2017.

The tenant agrees that rent was scheduled to be due on the 1<sup>st</sup> of each month. The tenant gave notice to end tenancy on April 19, 2017 (date notice received by landlord). The tenant was scheduled to move in on April 19, 2017. It should also be noted that the tenant has not argued that the landlord breached a material term of the tenancy agreement and therefore the tenant had no right to end the tenancy *early*.

Based on the tenant's notice to end tenancy on April 19, 2017, I find that the tenant is responsible for the portion of April 2017 during which she intended to reside (after April 19, 2017) as well as the portion of May 2017 during which the landlord did not receive rent (to May 12, 2017 before the new tenants moved in).

I find that the landlord is entitled an amount equal to 11 days rent in April 2017 and 12 days rent in May 2017. Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the tenant's security deposit towards the monetary order reflecting the landlord's loss. Further, as the landlord was successful in this application, I find that the landlord is entitled to recover the filing fee for this application. The landlord is entitled to a total monetary order as follows,

Item	Amount
April Rent from 19 <sup>th</sup> – 30 <sup>th</sup> (\$720 rent / 30 days = \$24.00 per day) x 11 days	\$264.00
May Rent from 1 <sup>st</sup> – 12 <sup>th</sup> (\$720 rent / 31 days = \$23.22 per day) x 12 days	278.64
Less Security Deposit	-360.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$282.64</b>

### Conclusion

I issue a monetary order to the landlord in the amount of \$282.64.

The landlord is provided with this 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.

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: October 3, 2017

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Residential Tenancy Branch