



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR MNSD MNDC 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, monetary loss or money owed 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, pursuant to section 72

DS ('tenant') appeared and testified on behalf of the tenant in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlord's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

### **Preliminary Issue – Landlord's Evidence**

The landlord submitted photographs in their evidence as part of her application, but this evidence was received by the tenant. The landlord admitted that the evidence was not served to the tenant for this hearing.

The tenant testified that she wanted this evidence excluded as she did not have the opportunity to review the photographs, and prepare a response.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was October 16, 2017.

This evidence was not served within the timelines prescribed by rule 3.14 of the Rules. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the landlord acknowledged that she did not serve the tenant with this evidence. I find it would be prejudicial to the tenant to admit the photographs for this hearing as the tenant did not have an opportunity to review and respond to these photographs. On this basis, I exclude the landlord's photographs for the purpose of this hearing.

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

Is the landlord entitled to a monetary order for damage, monetary loss, or money owed?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

#### **Background and Evidence**

This month-to-month tenancy began in May of 2013 and ended on May 24, 2017. Monthly rent was set at \$2,263.00, and the landlord collected a security deposit and pet damage deposit of \$1,100.00 each, which the landlord still holds. This tenancy pertains to a four bedroom house and garage. The tenant provided a forwarding address on May 9, 2017 when written notice was given to the landlord to end this tenancy effective June 1, 2017.

The tenant included in their evidence a copy of the letter dated May 9, 2017 which stated that the tenant was “submitting our thirty day notice to end the tenancy. We do realize that it encroaches on the rental month of June. We are planning to return all of your keys on June 1st, no later than 1 pm”. The tenant admitted in the hearing that they failed to give the landlord less than a month's notice, but testified that reasons were

provided in the written evidence provided, stating that that she did not feel comfortable or welcome there.

The landlord testified in the hearing that after the tenant moved out, she mitigated her losses by posting an advertisement immediately, but was unsuccessful in finding a tenant until July 1, 2017. The landlord found a tenant for July 1, 2017, but reduced the rent by \$263.00 a month as the landlord only rented three of the four bedrooms, keeping one for herself. The tenant acknowledged in the hearing, and in her evidence, that the landlord posted the house for rent the next day after receiving the tenant's notice. The landlord testified that she suffered a monetary loss for June 2017 rent due to the tenant's failure to give one month's notice as required by the *Act*, and is seeking compensation for this loss, as well as recovery of the filing fee for this application.

### **Analysis**

Section 45(1) deals with a Tenant's notice in the case of a periodic tenancy:

**45** (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice, and*

*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The landlord provided undisputed evidence at this hearing that the tenant did not give one month notice to end this tenancy as required by section 45(1)(a) of the *Act*. I then must consider whether the landlord has sufficiently mitigated her damages. The landlord provided undisputed testimony in the hearing that she had posted the home for rent the next day after receiving notice from the tenant. I find that the landlord provided sufficient evidence to support that she had suffered any financial loss due to the tenant's failure to comply with section 45(1)(a) of the *Act*. I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for June 2017, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's monetary claim for one months' rent.

As the landlord was successful in her application, I am allowing the landlord to recover the filing fee from the tenant.

The landlord continues to hold the tenant's security deposit and pet damage deposit of \$1,100.00 each. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security and pet damage deposits in satisfaction of the monetary claim.

**Conclusion**

I find that the landlord is entitled to monetary compensation in the amount of \$2,263.00 for the tenant's failure to comply with section 45(1)(a) of the *Act*, and \$100.00 for the filing fee for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$2,200.00 of the tenant's security and pet damage deposits in satisfaction of the monetary claim.

I issue a Monetary Order in the amount of \$163.00 in the landlord's favour. The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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 31, 2017

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Residential Tenancy Branch