



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlord did not attend this hearing which lasted 10 minutes. The tenant KC (the "tenant") attended, confirmed she represented both co-tenants and was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with the application for dispute resolution and evidentiary materials on June 3, 2017 by registered mail. The tenant provided a Canada Post tracking number as evidence of service. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application and evidence on June 8, 2017, five days after mailing.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

### Background and Evidence

The tenant provided the following undisputed facts. The tenant responded to an advertisement for the rental property on May 13, 2017. The monthly rent for the rental unit would be \$900.00 and a security deposit of \$450.00 and pet damage deposit of \$450.00 was payable at the start of the tenancy. The tenant provided the landlord with \$700.00 as a deposit at that time. The tenant submitted into written evidence a photograph of the receipt for the \$700.00 payment. The tenant subsequently provided

the landlord with references and attempted to arrange a date to pick up the keys to the rental unit.

The landlord informed the tenant on May 17, 2017 by email that he had entered into an agreement with a different tenant and the rental unit was no longer available. The landlord returned the \$700.00 to the tenant.

The tenant testified that because she believed that she entered a tenancy agreement on May 13, 2017 she stopped looking for accommodations at that time. The tenant said that she was unable to find accommodations for June, 2017. The tenant seeks a monetary award in the amount of \$3,500.00 which she said is based on the lost opportunity to enter a tenancy. The tenant said that she based the amount she is seeking on similar rents in the area.

### Analysis

The Residential Tenancy Act defines a tenancy agreement as:

An agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit

The tenant submits that by responding to an online advertisement and paying the landlord a deposit of \$700.00 a tenancy agreement was created. Based on the evidence I do not find that there was an enforceable tenancy created simply because the tenant responded to an advertisement and provided funds to the landlord. The receipt issued by the landlord indicates that the \$700.00 would comprise a portion of the \$450.00 security deposit and \$450.00 pet damage deposit upon completion of a successful reference check and entering into a tenancy. Under the circumstances I find that the \$700.00 was being held by the landlord and would have formed part of the deposit for this tenancy if a tenancy was entered by the parties. I find insufficient evidence to show that the parties entered into an enforceable tenancy agreement. Both the receipt and the correspondence indicate that the landlord was still in the process of determining if they would accept the tenant's application to enter a tenancy agreement. I find that there was no meeting of minds wherein a tenancy agreement was entered by both of the parties on May 13, 2017. Consequently, as I find there was no tenancy in place I find I have no jurisdiction to consider the present application as I have no jurisdiction in this matter.

Conclusion

I find that I do not have jurisdiction in this matter and I dismiss the tenants' application for dispute resolution.

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: November 7, 2017

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Residential Tenancy Branch