



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND MNR FF

This hearing was convened in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

Landlord:

- a monetary order for unpaid rent and damage to the rental unit pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant confirmed service of the landlord's applications and evidence on file. The tenant stated that on September 30, 2017, he sent an evidence package in response to the landlord's application but no such evidence package was on file. The tenant acknowledged a copy of this evidence package was not sent to the landlord.

The hearing continued with only the evidence before me on file.

## Issues

Is the landlord entitled to a monetary award for unpaid rent or damage?

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

## Background & Evidence

The tenancy began on May 1, 2016 with a monthly rent of \$2200.00 payable on the 1<sup>st</sup> day of each month. The tenancy was for a one year fixed term ending on April 30, 2017. The tenancy agreement was initialed by both the landlord and the tenant requiring the tenant to vacate the rental unit at the end of the fixed term. The tenants vacated the rental unit on May 16, 2017.

The landlord is claiming an amount of \$2200.00 as loss of rent for June 2017 plus an amount of \$100.00 for an outstanding rent increase for the months of May and June 2017. The landlord submits the tenancy agreement as proof of the rent owed and an unsigned "addendum to renew or extend lease agreement". The landlord further submits a copy of a cheque the tenants provided for the month of May 2017 in the amount of \$2250.00 as evidence of the tenant's agreement to the rent increase. The landlord testified the tenants later put a stop payment on this cheque and paid one half month's rent instead. The landlord testified the tenants verbally agreed to a 2 month lease extension but did not sign and return the agreement.

In addition, the landlord is claiming an additional \$7559.56 in compensation for damage to the rental unit and costs associated with the landlord's lost wages, hotel and gas expenses in dealing with this tenancy.

The tenant testified that he provided verbal notice to the landlord on April 26, 2017 that they would be vacating the rental unit on May 15, 2017. The tenant denies any verbal agreement to extend the lease.

#### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

*Residential Tenancy Policy Guideline #16* "Compensation for Damage or Loss" provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to Section 44(1)(b) of the Act, a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides the tenant will vacate the rental unit on the date specified as the end of the tenancy.

The original tenancy agreement entered into and signed by both parties required the tenant to vacate the rental unit on April 30, 2017. Both the tenant and the landlord initialed the box portion of the tenancy agreement stipulating this requirement. The landlord has not provided sufficient evidence that the tenants agreed to a 2 month extension. The extension agreement is not signed by the tenants. As a result, I find this tenancy ended on April 30, 2017 and the tenants' were not required to give written notice to end the tenancy. The tenants were simply over holding for the period of May 1, 2017 to May 16, 2017. The landlord's claim for loss of rent for June 2017 is dismissed. In either event, the landlord did not provide any evidence to show he attempted to mitigate any loss by re-renting the rental unit soon after the tenants vacated. The landlord did not provide copies of any advertisements placed to re-rent the unit.

The landlord's claim for the alleged rent increase for the months of May and June 2017 is also dismissed as I have found this tenancy ended on April 30, 2017 and there is insufficient evidence of it being renewed let alone at an increased rent.

The balance of the landlord's claim is also dismissed as the landlord has failed to provide any supporting evidence such as pictures of the rental unit or a completed move-in and move-out inspection report or any invoices or receipts to prove the amount or value of the losses claimed. The landlord only submitted

one receipt in the amount of \$65.76 for the purchase of paint but again failed to provide any other evidence in support of this claim.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application.

The landlord's application is dismissed in its entirety without leave to reapply.

#### Conclusion

The application is dismissed without leave to reapply.

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 23, 2017

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Residential Tenancy Branch