



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

### Preliminary Matter

The Tenant did not attend the hearing. After the end of the tenancy the Tenant never provided a forwarding address to the Landlord. In a previous Decision dated August 29, 2017 the Landlord was provided with a monetary order. The Landlord conducted research and located the Tenant’s residence. The Landlord sent the monetary order to that address by registered mail and it was accepted and signed for by the Tenant. The Landlord served the Tenant with the current application for dispute resolution and notice of hearing (the “Materials”) by registered mail on October 26, 2017 to that same address. Given this evidence I accept that the Landlord served the Tenant with the Materials in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on October 31, 2017. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy originally started in July 1989 with rent of \$600.00 payable on the first day of each month. At the outset of the tenancy the Landlord collected \$300.00 as a security deposit. The Parties signed another tenancy agreement for a start date of July 1, 2016 on a fixed term to end June 30, 2017 at which time the Tenant was required to move out of the unit. The rent became \$1,105.00 for this fixed term tenancy and the security deposit was carried over with interest from the original date included in the amount of \$387.84.

In April 2017 the owner of the unit reminded the Tenant of the required move out on June 30, 2017. The Tenant asked for an extension of the tenancy and the Parties verbally agreed to extend the tenancy for another two months at a rental rate of \$1,400.00. When a new agreement was sent to the Tenant with the changes the Tenant refused to sign it. On July 1, 2017 as the owner's agent was placing a sale sign on the property the Tenant informed this agent that the Tenant would be moved out of the unit by July 16, 2017. I note that the previous Decision dated August 29, 2018 was made following the Landlord's application for an order of possession made July 7, 2017 and the Decision notes that the Landlord had the right to make another application for unpaid rent. The Tenant moved out and returned the keys to the unit on July 16, 2017. The Tenant paid no rent for July 2017. The Landlord claims \$700.00

### Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. The parole evidence rule provides that a written agreement may not be changed by oral evidence alone. Policy Guideline #3 provides that a tenant is not liable to pay rent after a tenancy agreement has ended, however if a tenant remains in possession of the premises (over holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. Based on the Landlord's undisputed evidence of the fixed term tenancy and that the Tenant

never signed another agreement for a greater amount of rent or a longer extension to the fixed term I find that the rental amount and the end date of the original tenancy agreement was not changed, that the Tenant was required to move out of the unit on June 30, 2017, and that by not moving out of the unit on that date the Tenant became an overholding Tenant. Based on the undisputed evidence that the Tenant moved out of the unit on July 16, 2017 I find that the Landlord is entitled to overholding rent at the per diem rate of the \$35.65 ( $\$1,105/31 = 35.65$ ), for a total amount of **\$570.40** ( $35.65 \times 16$  days). As the Landlord has been substantially successful with its claim I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$670.40**.

As the Landlord has held the security deposit of \$300.00 to date since July 1989 and using the RTB online calculator I find that the interest to date on the original security deposit is **\$176.63** for a total of **\$476.63**. Deducting this amount from the Landlord's entitlement of **\$670.40** leaves **\$193.77** owed to the Landlord.

### Conclusion

I Order the Landlord to retain the security deposit plus interest of \$476.63 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$193.77**. If necessary, this order may be filed in the Small Claims 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: May 25, 2018

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Residential Tenancy Branch