



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC MNR FF

### Introduction

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

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72.

Only the landlord’s agent, P.T. attended the hearing (the “landlord”). The landlord was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed that she had sent copies of the application for dispute resolution, along with her evidentiary package to the tenants’ on two occasions. Both packages were sent by way of Canada Post Registered Mail and the Canada Post tracking numbers and receipts were provided to the hearing as part of the landlord’s evidentiary package. These receipts showed that the tenants were mailed these packages on October 17, 2017 and again on November 25, 2017. Pursuant to sections 88, 89 & 90 of the *Act* the tenants are deemed served with these documents, five days after their posting.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

### Background and Evidence

The landlord provided undisputed testimony that this tenancy began in September 2015 and was for a fixed term of one year. The parties signed a second fixed term tenancy that was to run from October 1, 2016 to October 1, 2017. Rent was \$1,500.00 per

month, and a security deposit of \$750.00 collected at the outset of the tenancy, continues to be held by the landlord.

In June 2017 the tenants were told by the landlord that the property was being sold and their tenancy would not be extended beyond the end of the fixed term agreement which was set to expire on October 1, 2017. The landlord said that the tenants were initially agreeable to this and a series of emails was exchange between the parties in June 2017 clarifying with the tenants that their fixed term tenancy would not be renewed. In these emails the tenants noted they would be out of the rental unit for October 1, 2017. On September 4, 2017 the tenants informed the landlord that they would in fact be staying until October 31, 2017.

The landlord is seeking a monetary award for the rent which was unpaid for October 2017.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord explained that the parties entered a fixed-term tenancy agreement which was set to expire on October 1, 2017. At the hearing the landlord argued that the tenants remained in the rental unit until October 31, 2017 and paid no rent for the time in which they overheld in the rental unit, in this case October 2017.

Section 57(3) of the *Act* states that, "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended." Based on the evidence presented at the hearing and the landlord's oral testimony, I find that this tenancy ended by way of a fixed-term tenancy on October 1, 2017, and that the tenants remained in the rental unit until October 31, 2017. No rent was paid by the tenants for the month of October 2017 and the tenants

must therefore pay a monetary award to the landlord for the time in which they continued to occupy the rental unit following the conclusion of their tenancy.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit as partial compensation for the money owed.

As the landlord was successful she may recover the filing fee associated with the application.

### Conclusion

I issue a monetary order in the landlord favour in the amount of \$850.00 as follows:

Item	Amount
Unpaid Rent for October 2017	\$1,500.00
Less Security Deposit	(-750.00)
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$850.00</b>

The landlord is provided with these Orders in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 15, 2018

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Residential Tenancy Branch