



# 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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant confirmed receipt of the notice of hearing package and the landlord's submitted documentary evidence via Canada Post Registered Mail on February 26, 2018. The tenant submitted no documentary evidence. Neither party raised any issues with service. As both parties have attended and confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2017 on a fixed term tenancy ending on March 31, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 31, 2017 for the furnished rental unit. The monthly rent was \$3,200.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,600.00 was paid on

October 31, 2017. Both parties confirmed in their direct testimony that the tenant provided notice via an online platform on November 28, 2017 to end the tenancy.

The tenant claims that the landlord was informed that the tenancy was ending on November 28, 2017. The landlord claims that the tenant did not give a specific date of ending the tenancy, but accepted the return of the rental unit keys on December 10, 2017 and deemed that the end of tenancy in lieu of no written notice. The tenant confirmed that the rental unit keys were returned on December 10, 2017.

The landlord seeks a monetary claim of \$8,156.76 which consists of:

\$156.76	Combined Unpaid Utilities (Hydro and Gas)
\$8,000.00	Unpaid Rent/Loss of Rental Income (December 2017, January 2018 and February 2018)

The landlord claims that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 4, 2017 by posting it to the rental unit door on December 4, 2017. The 10 Day Notice states that the tenant failed to pay rent of \$3,200.00 in unpaid rent that was due on December 1, 2017. An effective end of tenancy date is stated as December 14, 2017.

The tenant argued that she did not receive the 10 day notice dated December 4, 2017, but confirmed in her direct testimony that insufficient notice was given to the landlord to end the tenancy on November 28, 2017 via an online platform.

The landlord claims that the tenant abandoned the rental unit on December 10, 2017 without paying the December 2017 rent of \$3,200.00. The landlord also claims that the tenant caused a breach of the signed tenancy agreement by prematurely ending the tenancy resulted in the landlord suffering a loss of rental income of \$4,800.00 for 2 months (January 2018 and February 2018). The landlord claims that upon being notified by the tenant on November 28, 2017 of her intention to end the tenancy, the landlord began advertising the rental unit on December 1, 2017, but was unsuccessful until April 5, 2018. The landlord clarified that repeated online advertising and a lowering of the monthly rent from \$3,200.00 to \$2,800.00 was not successful until April 5, 2018.

The tenant disputes the landlord's claim of being unsuccessful in re-renting the unit and argued that the geographic area involved is very popular. The landlord countered that this was during the winter season in which people are generally committed in their tenancies.

The landlord also seeks money owed for unpaid utilities of \$156.76 for Hydro and Gas costs incurred for the period November 1, 2017 to February 15, 2018. During the hearing the tenant did not dispute the landlord's utility claims and accepted the entire \$156.76.

In support of these claims the landlord has submitted:

- Copy of 10 Day Notice dated December 4, 2017
- Copy of Proof of Service (10 Day Notice) dated December 4, 2017, with a witness
- Copy of signed tenancy agreement dated October 31, 2017
- Copy of 2 Hydro invoices
- Copy of Gas invoice

### 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, I accept the affirmed testimony of both parties and find that the tenant confirmed in her direct testimony that she did not give notice to end the tenancy until November 28, 2017 which she agreed was pre-maturely ending the tenancy. Although the landlord agreed that notice was given, a dispute on when the tenancy actually ended was noted. The tenant argued that the notice to end tenancy was given on November 28, 2017 for November 28, 2017. However, the landlord argued that no end of tenancy date was given, but that both parties agreed the tenant returned possession of the rental unit with the keys on December 10, 2017. On this basis, I find that notice was given on November 28, 2017, but that actual possession was not returned until December 10, 2017 when the tenancy is considered ended. In any event, I find that the tenant failed to provide proper 1 months' notice to the landlord and the landlord has established a claim for loss of rental income for December 2017 of \$3,200.00.

On the remaining claim of loss of rental income/unpaid rent of \$4,800.00 for January and February 2018, I find a discrepancy. The landlord provided undisputed affirmed testimony that the monthly rent was \$3,200.00, but that 3 months of rent equal \$8,000.00 as shown on the landlord's monetary worksheet provided. No explanation or clarification was provided by the landlord. However, the landlord's monetary claim is limited the amount filed for \$8,156.70 to include the unpaid rent/loss of rental income for the 4 months of loss/unpaid rent and the unpaid utilities. The remaining outstanding balance for 3 month period totals, \$9,600.00, but is limited to the amount of \$4,800.00.

The landlord has provided testimony that a loss of rental income occurred beginning for the period January, February and March 2018 as the landlord was unsuccessful in re-renting the premises until April 5, 2018. The tenant has disputed this claim stating that the rental premises is located in a popular area and does not believe that the landlord was unsuccessful in re-

renting. The landlord had clarified that during the period December to March is noted as the winter period and that all attempts at re-renting were unsuccessful even with a price reduction from \$3,200.00 to \$2,800.00 per month. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, I find that the landlord has failed to provide sufficient evidence of mitigation as the tenant has disputed this claim. The landlord failed to provide sufficient evidence of mitigation to keep any losses to a minimal were made. As such, this portion of the landlord's claim is dismissed.

During the hearing the tenant confirmed and accepted the landlord's claim for the entire monetary claim of \$156.70 for unpaid utilities.

The landlord has established a total monetary claim of \$3,356.70. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

#### Conclusion

The landlord is granted a monetary order for \$3,456.70.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: September 20, 2018

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Residential Tenancy Branch