



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR

### Introduction

On October 31, 2018, the landlord's application by Direct Request Proceeding was heard. The landlord was granted an order of possession, pursuant to section 55 of the Act and a monetary order, pursuant to section 67 of the Act.

On November 7, 2018, the tenant made an application for review consideration, which was granted only for the monetary portion of the decision, on the basis that they had new and relevant evidence. The Arbitrator at the new hearing may confirm, vary, or set aside the original decision.

This new hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The tenancy began on June 1, 2018. Rent in the amount of \$1,560.00 was payable on the first of each month. The tenant paid a security deposit of \$750.00. The tenancy

ended on August 29, 2018. The security deposit has been returned in accordance with the Act.

The landlord's agent testified that tenant resided in the premise for the month of October 2018, and they should be entitled to rent in the amount of \$1,560.00.

The tenant argued that the landlord sent them a text messages that they had to vacate the premises for repairs and that their child was going to move into the premises. The tenant stated that they informed the landlord that they were entitled to one month compensation and that is why they did not pay the rent for October 2018.

The tenant testified that although they knew they notice to end tenancy was not in the right form. They relied upon the notice and vacated the premises.

The landlord's agent confirmed the tenants were sent an email dated August 20, 2018. Filed in evidence is a copy of the text message.

The text message reads in part,

"... I have decided to repair the whole suite, meaning that the floor of the entire suite will need to be removed in order to so. In addition, my daughter requests some privacy when she returns from school in December...I would like to please request that you find a new rent at a different location or the dated we can all agree to before December 1..."

[Reproduced as written.]

The landlord's agent responded that the repairs were made and that the landlord's child is now living in the premises.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 5 (1) of the Act states landlords and tenants may not avoid or contract out of this Act or the regulations. (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 49(3) of the Act states, a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(6) of the Act states, a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

...

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

...

51 (1) of the Act states, a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the tenant did not receive a notice to end the tenancy. Rather the tenant received a text message from the landlord indicating that they would have to move because the landlord was going to make repairs and that their child was going to occupy the space.

The tenant informed the landlord that they were entitled to compensation pursuant to section 51 of the Act.

Although I accept the tenant did not receive a notice to end tenancy pursuant to section 49 of the Act, I find the text message from the landlord falls within the provisions set out in section 49 of the Act. The tenant vacated the premises basis on the reasons given.

I find the landlord has breached the Act, by attempted to avoid the Act, by sending a text message; rather than issuing the proper notice. I find the tenant was entitled to rely upon the reasons stated in the message. Therefore, I find the tenant was entitled to withhold rent for October 2018, as that is compensation for the landlord ending the tenancy for landlord's use of property.

Therefore, I dismiss the landlord's claim for unpaid rent for October 218. The landlord is not entitled to recover the filing fee.

Having made the above finding, I cancel the original monetary order issued on October 31, 2018. The order has no force or effect.

### Conclusion

The landlord application for a monetary order is dismissed. The original monetary order issued on October 31, 2018, is cancelled and has no force or effect.

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: January 07, 2019

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Residential Tenancy Branch