



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The Tenant applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee from the hearing. The Tenant seeks the return of the first month's rent he paid for a rental unit that he never occupied.

The Tenant and the Landlord attended the teleconference hearing and gave affirmed testimony. The Parties were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; however, I have only referred to evidence that is relevant to the issues in this matter and consistent with the Residential Tenancy Branch Rules of Procedure.

The Parties agreed that they signed a written tenancy agreement on May 16, 2018, for a tenancy that would start on July 1, 2018, in a house that was shared by other tenants. The Parties agreed to a monthly rent of \$600, a security deposit of \$300, and a one-time payment by the Tenant to the Landlord of \$50 for storage space in the garage for the month of June 2018.

However, in June 2018, the Tenant advised the Landlord that he had to cancel the tenancy agreement. The Landlord returned the security deposit and the Tenant does not seek the return of the \$50, as he said he used the storage space in June 2018.

### Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing and their understanding that the decision would be emailed to both Parties, and

that any applicable orders would be emailed to the appropriate Party.

The Landlord said the Tenant served her with the Application and documentary evidence at her former address, rather than her current address. The Landlord said the new owners of her former property gave her the Tenant's package; however, the Landlord said the only evidence that was included in this package was (a) the Tenant's statement explaining what he had paid the Landlord for the planned tenancy; and (b) that the Tenant sought a refund of the \$600 he paid the Landlord for July 2018 rent - the first month of the tenancy. The Tenant did not dispute the Landlord's evidence in this regard. As a result, I will only consider this evidence that the Landlord said the Tenant served on the Landlord.

#### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order pursuant to section 67 of the *Act*, and if so, in what amount?
- Is the Tenant entitled to the recovery of the cost of the filing fee under section 72 of the *Act*?

#### Background and Evidence

The first issue I must decide is whether the *Act* applies in this matter – whether I have jurisdiction to consider the Application. The Landlord asserted that this is not a tenancy under the *Act*, because she uses the bathroom and kitchen facilities when she attends the rental unit to work on her art in the garage; she said this happens at least twice a week, but that she lived elsewhere during the timeframe relevant to this matter.

The Landlord said her niece rented one of the rooms and that they were going to set up a “rent to own” arrangement for her niece; however, the evidence before me is that the Landlord was the owner of the rental unit at the time and that she had a residential address elsewhere. If the Landlord had lived at the rental unit and shared the kitchen and bathroom with the tenants, then pursuant to section 4(c) of the *Act*, this situation would not be governed by the *Act*.

#### **What this Act does not apply to**

**4** This Act does not apply to

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(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

However, the Landlord did not live there, which I find is one consideration as to whether section 4(c) of the Act applies to this situation or not. A tenancy begins when the parties sign a tenancy agreement, not when the tenant moves in, pursuant to section 16, as noted below. However, in practical terms, the Parties before me had not had an opportunity to work out an arrangement that allowed the Landlord to continue using the kitchen and bathroom of the rental unit, while the Tenant lived there. The Landlord may or may not have had to ask permission to the Tenant when she wanted to use these facilities.

Further, the tenancy agreement makes no mention of the Landlord being allowed to use the kitchen and bathroom without notice. The only reference in the written agreement to the Landlord attending the rental unit is in terms of providing the Tenant with 24 hours written notice before showing the rental unit to prospective renters, should the Tenant give notice of his intent to vacate the rental unit. This term is consistent with the requirements under the *Act*, and is inconsistent with the Landlord using the rental unit facilities without the tenants' permission.

When I consider all the evidence before me overall, I find on a balance of probabilities that this situation is governed by the *Act* and that I have jurisdiction to consider the matter.

The evidence before me is that on June 8, 2018, the Tenant gave the Landlord notice that he had changed his mind about the tenancy. The Tenant said he discovered that one of the other tenants had a dog that was allowed indoors, and he said he is allergic to dogs; however, the Landlord said she had told the Tenant about the dog when they were first negotiating the tenancy agreement. The Tenant said he had understood that it was an outdoor dog, but that he learned the contrary when he dropped by the rental unit in June 2018.

### Analysis

The Tenant implied that he should be refunded the rent he paid for July 2018, because he notified the Landlord as soon as possible that he could not fulfill the tenancy agreement, due to his dog allergy. Section 16 of the Act states:

- 16.** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[emphasis added]

Further, section 45 of the *Act* requires a tenant to give a landlord one month's notice in such a circumstance. The Landlord disputes that she must return the July rent to the Tenant, because he did not provide her with a month's notice of his intention to end the tenancy; she argued that he thereby affected her ability to mitigate the loss of rental income.

If a tenant vacates a landlord's property, the tenancy ends regardless of the length of the lease; further, a landlord's obligation to mitigate the damages suffered starts as soon as the tenancy ends, pursuant to section 7 of the *Act*.

The Landlord said she tried to mitigate her loss of July rent by advertising for a new tenant on a local website and in social media. She also said she asked the remaining tenants if they knew of anyone looking for rental accommodation, with whom they would be willing to live. The Landlord said she was unable to find a suitable tenant for July 2018 and could not find someone until January 2019.

In the hearing, the Landlord said her efforts to find a new tenant were affected by a female tenant who told the Landlord that she preferred female roommates in the house. The Landlord said this limited the field of candidates who could move in. This is not relevant to the Tenant's Application, other than in offering an explanation as to why it took the Landlord so long to find another tenant.

When I consider the evidence on this matter before me, overall, I find the Landlord took appropriate steps to mitigate her loss in this matter.

Based on all the evidence before me overall, and pursuant to sections 7 and 67 of the *Act*, I find that the Tenant's claim is unsuccessful. I find the Tenant breached the terms of the tenancy agreement and the *Act* by not giving the Landlord 30 days' notice of his intention to end the tenancy agreement. I find the Landlord is entitled to retain the \$600 the Tenant paid her for July 2018 rent. I do not grant the recovery of the filing fee in this situation, since the Tenant was unsuccessful in his Application, and the Landlord did not apply for it.

Conclusion

The Tenant's claim is wholly unsuccessful; the Landlord is authorized to retain the rent the Tenant paid for the first month of the tenancy agreement.

This decision is final and binding on the Parties, unless otherwise provided under the *Act*, and 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: February 8, 2019

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Residential Tenancy Branch