



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL MNRL-S

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing, with the tenant being assisted by his social worker, L.R. Both parties were given a full opportunity to be heard, to present their testimony and to make submissions.

The tenant confirmed receipt of the landlord's application for dispute and evidentiary package, while the landlord confirmed receipt of the tenant's evidence. All parties are found to have been duly served in accordance with sections 88 & 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award? If so, can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

### Background and Evidence

The parties explained that this tenancy was set to begin on October 15, 2018. Rent was to be \$1,900.00 per month, while a security deposit of \$950.00 was paid by the tenant and continues to be held by the landlord.

Due to an unforeseen event, the tenant chose not to move into the unit. The tenant provided notice of these intentions to the landlord on October 9, 2018. The landlord argued she should be entitled to a monetary award of \$3,200.00 as a result of the tenant's alleged defaulting of the contract signed by the parties. Specifically the landlord sought half of one month's rent for October 2018, along with rent for November 2018 in its entirety. In addition, the landlord included a move-in fee and a hydro bill. The landlord said the parties had entered into a fixed-term tenancy and the tenant was therefore bound to provide her with compensation as a result of this broken contract. The landlord said that despite the best intentions of her real estate agent, she was unable to find a new tenant until January 2019.

A review of the tenancy agreement signed by the parties' notes as follows:

*The tenancy created by this agreement starts on: 15 October, 2018*

Below this portion the parties have marked they agree to term 2(c) of the tenancy agreement which says:

*And is for a fixed-term ending on (blank) (blank) 2019.*

The areas where a day and month normally appear are blank.

Below this, the parties have marked they agree to be bound by section 2(d) which says:

*At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term*

The parties have then initialled the portion of the tenancy agreement which says:

*If you choose E, both the landlord and tenant must initial here.* A review of the tenancy agreement signed by the parties revealed that no portion of section 2(e) was completed or agreed to.

### Analysis

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

After having reviewed the tenancy agreement signed by the parties, it is evident that the parties did not in fact enter into a fixed-term tenancy agreement. No end date is provided by the agreement signed by the parties`, furthermore, there is a sufficient amount of confusion related to sections 2(d) & (e) as these sections of the tenancy agreement contradict one another in the manner in which they were completed. I find the parties had in fact entered into a month to month tenancy which was set to begin on October 15, 2018. I accept the testimony of both parties that this contract was broken on October 9, 2018 and therefore find that the landlord is entitled only to rent for October 2018.

I order the landlord to retain the tenant`s security deposit in its entirety, in full compensation for unpaid rent of October 2018. I decline to award the landlord unpaid rent for November 2018 because this was not a fixed-term tenancy and the tenant had no contractual obligation to pay rent for any period of time beyond the initial first month. Furthermore, I decline to award the landlord compensation for a move-in fee or hydro as the tenant did not actually occupy the rental unit.

As the landlord was partially successful, she may recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord is entitled to retain the tenant's security deposit in its entirety. I issue a Monetary Order of \$100.00 in favour of the landlord for a return of the \$100.00 filing fee.

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: February 11, 2019

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Residential Tenancy Branch