



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sutton Max Realty & Property  
Management and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on March 4, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act; and,
- to recover the cost of the filing fee.

Both parties attended the hearing and provided testimony. The Tenant confirmed receipt of the Landlord's application and evidence but stated he did not provide his evidence to the Landlord. As stated in the hearing, the Tenant's documentary evidence will not be considered, as it has not been sufficiently served to the Landlord. The Tenant was okay with only providing oral testimony.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?

### Background and Evidence

Both parties agree that monthly rent was \$3,000.00, and was due on the first of the month. A copy of the most recent lease agreement was provided into evidence, which shows that the Tenant was in a fixed term 1 year lease ending on September 30, 2018. Both parties initialed beside the box on the Tenancy Agreement which indicates that at the end of the fixed term, the Tenant must vacate the rental unit.

Both parties agree that the Landlord has already returned the security deposit.

The Landlord stated that on October 22, 2018, they received written notification from the Tenant that he would be moving out of the rental unit by October 31, 2018. The Landlord stated that the Tenant was initially living under a fixed term tenancy agreement from October 1, 2016, until September 30, 2017, for a monthly rent of \$2,880.00. At the end of this initial agreement, the Tenant was required to move out. However, prior to the end of this first fixed term tenancy agreement, the Landlord initially sent a new fixed term tenancy agreement, starting on November 1, 2017, and ending on October 31, 2018.

The evidence shows that the Landlord realized they made a mistake on the date, and subsequently sent a corrected tenancy agreement, starting on October 1, 2017, and lasting until September 30, 2018. The parties agreed that the first tenancy agreement (with the date error) was not signed by both parties, and the second tenancy agreement with the correct dates was the one both parties signed and agreed to.

The Tenant stated that when he gave his written notice to the Landlord on October 22, 2018, he was relying on the agreement with the date error in it, even though it was never signed by both parties. The Tenant expressed that he was under the impression that he had to move out at the end of October 2018, as per the tenancy agreement that was never signed. The Tenant placed little to no weight on the tenancy agreement he (and the Landlord) signed with the corrected one year fixed date range of October 1, 2017, until September 30, 2018.

The Landlord stated that since the tenancy laws changed in December 2017 (after they had already signed the 1 year fixed term tenancy agreement with a vacate clause) the Tenant was no longer required to vacate the rental unit at the end of the 1 year fixed term, which was September 30, 2018 (as per the latest signed tenancy agreement). The Landlord pointed out that given the change in the law, the tenancy would revert to a month-to-month tenancy at the end of September 2018, rather than requiring the Tenant to vacate, or sign a new agreement.

The Landlord stated that at the time the Tenant gave his notice on October 22, 2018, he was on a month-to-month tenancy, and he was required to give at least one month notice. Both parties agree the Tenant moved out on October 31, 2018, and only gave one week notice that he was going to vacate.

The Tenant further stated that he did not know about the changes to the tenancy laws which made it so that he no longer had to move out at the end of his fixed term tenancy, and the Tenant expressed that he is not responsible for knowing these changes. The Tenant expressed that since he did not know about the law change, and the modifications to the vacate clause in tenancy agreements, he should not be responsible for any of this monetary claim from the Landlord.

The Tenant also stated that he overpaid rent for the last year of his tenancy by \$120.00, and he stated that he should not owe the Landlord any money because his overpayments should be used to offset any amount he owes. The Tenant feels he overpaid by \$1,440.00 over the last year because his rent went up from \$2,880.00 to \$3,000.00 in 2017.

In this application, the Landlord explained that they are looking to recover November 2018 rent. The Landlord explained that they were able to re-rent the unit for the last week of November 2018, but that they are looking to recover rent for the first 3 weeks of November, due to the Tenant's short notice.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First, I turn to the tenancy agreements, and the rights and responsibilities of the parties during the last year of the tenancy. I note the Landlord had a practice of signing serial fixed term tenancy agreements. The first between these parties was October 1, 2016, - September 30, 2017. Rather than move out, as he agreed to do at the end of that agreement, the Tenant signed a new fixed term tenancy agreement from October 1, 2017, - September 30, 2018. I find the other agreement which the Landlord sent to the Tenant was obviously in error, and I note it was not signed by both parties. I find the only valid and enforceable tenancy agreement during the last year was the one signed by both parties for the period of October 1, 2017, - September 30, 2018.

With respect to the Tenant's allegations of an illegal rent increase, I note the monthly rent increased from \$2,880.00 to \$3,000.00 at the time he signed his new tenancy agreement starting October 1, 2017. Having reviewed this matter, I find the Landlord has not illegally increase rent, as the parties signed a new tenancy agreement, and both parties agreed to the rent increase. Although the laws changed in December 2017, and the Landlord was no longer (in this situation) able to require the Tenant to move out at the end of the fixed term tenancy agreement in September of 2018, I note the tenancy agreement signed for the last year of the tenancy was entered into prior to the laws changing. In other words, when the Landlord and the Tenant signed the new tenancy agreement starting in October 2017, I find this was done lawfully, and although rent was increased, year-over-year, it was not done illegally.

When the laws changed in December 2017, I note the parties were in the middle of a one year fixed term with a vacate clause. Since the law change applied to tenancy agreements already entered into, I find this impacted the tenancy agreement the parties had at that time. I note the Tenant was unaware of the changes in the law. However, it is up to each party (landlord and tenant) to know the law, how it changes over time, and how it impacts them. The Tenant was not required to vacate at the end of the tenancy agreement in the fall of 2018, given the changes in tenancy laws, and I find the parties were on a month-to-month tenancy agreement as of the end of September 2018.

As such, the Tenant was required to give at least one month notice in order to end the tenancy, which he did not do. In this case, the Landlord received written notice on October 22, 2018, and the Tenant left on October 31, 2018. I find the Tenant is responsible for November 2018 rent in the amount of \$3,000.00, given the very short notice he gave to the Landlord.

I note the Landlord took steps to mitigate their loss, and was able to re-rent the unit by the 3<sup>rd</sup> week of November. That being said, I find the Tenant is liable to pay for the first 3 weeks of November 2018 when the rental unit sat empty. I find the Landlord is entitled to 3 weeks rent at the amount which was set under the last active tenancy agreement between the parties (75% of \$3,000.00). I find the Tenant is responsible for \$2,250.00.

As the Landlord's application was mostly successful, and pursuant to section 72 of the Act I grant the Landlord the recovery of the cost of the filing fee in the amount of **\$100.00.**

### Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$2,350.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: March 7, 2019

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Residential Tenancy Branch