



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, 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 his filing fee for this application from the tenant pursuant to section 72.

The landlord's agent, M.M. (the landlord) attended the hearing via conference call and provided undisputed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence in person on January 9, 2019 at the tenant's work place. I accept the undisputed testimony of the landlord and find that the tenant was properly served in person on January 9, 2019.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss 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 December 1, 2018 on a fixed term tenancy of 12 months ending on November 30, 2019 as per the submitted copy of the signed tenancy agreement dated November 12. The monthly rent was \$1,800.00 payable on the 1<sup>st</sup> day of each month. The landlord clarified that the agreement was signed on November 12, 2018.

The landlord seeks a monetary claim of \$1,800.00. The landlord claims that the tenant signed a one year lease starting December 1, 2018, but on December 1, 2018 the tenant notified the landlord via email that he was not planning on moving in and taking possession of the rental unit. The landlord stated that he immediately began advertising the space for rent and held multiple showings. The landlord stated that because of the late notice and the holiday season, the landlord was only able to re-rent the unit for January 1, 2019. The landlord seeks \$1,800.00 for the loss of rental income for December 2018.

In support of this claim, the landlord has submitted copies of:

Signed tenancy agreement dated November 12, 2018

Email exchange between parties beginning November 6, 2018 to December 7, 2018 (includes Tenant's informal notice)

### 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, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed evidence of the landlord and find that the tenant failed to provide proper 1 month notice to end the tenancy after entering into a fixed term tenancy. The tenant gave "informal notice" via email on December 1, 2018 to end the fixed term tenancy ending on November 30, 2019. I also find that the landlord attempted to mitigate any losses by immediately advertising the rental unit to re-rent it,

but was not successful until January 1, 2019. On this basis, I find that the landlord has established a claim for unpaid rent/loss of rental income of \$1,800.00.

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 \$1,900.00.

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: May 2, 2019

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Residential Tenancy Branch