



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCL, FFL

### **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 in the amount of \$1,700 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's son also attended the hearing, although he did not provide any testimony or participate in the hearing.

The landlord testified that he served the tenant with the notice of dispute resolution package and supporting evidence package personally, on November 15, 2019. The tenant confirmed this. Accordingly, I find that the landlord has served the tenant in accordance with sections 88 and 89 of the Act.

The tenant did not serve any documents in support of her reply on the landlord.

### **Preliminary Issue**

At the outset of the hearing, the tenant had some difficulty answering my questions regarding service of documents; she repeatedly responded to my question asking if she received the landlord's documents by starting to make submissions about the merits of her case. This happened so often that I was required to mute the parties and explain, in detail, the hearing process.

After I explained the hearing process and explained that she would have an opportunity to tell me her side of the story later in the hearing, the tenant answered my questions regarding service of documents and the terms of the tenancy without issue.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$1,700; and
- 2) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month-to-month tenancy agreement starting October 1, 2019. Monthly rent is \$1,700 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$850. The landlord testified, and the tenant confirmed, that he returned the deposit to the tenant on November 15, 2019.

The tenant testified that due to a change of circumstances in her life, she notified the landlord via text message on October 13, 2019 that she would be ending the tenancy on November 1, 2019. The landlord confirmed that he received such a text message but could not confirm the date.

The parties agree that they met on October 26, 2019 to discuss the end of the tenancy, and the tenant signed a handwritten letter which states, in full:

I [tenant's name] on October 26, 2019 decide to move out and break this tenancy agreement to go to Korea.

I'll be move out Nov 1<sup>st</sup>, 2019 from [the rental unit].

I'll give the owner permission to rent out the place as Nov 1<sup>st</sup>, 2019.

The parties agree that the tenant vacated the rental unit on November 1, 2019.

The landlord testified that the tenant had arranged to sublet the rental unit to a third party, without his permission, and that the tenant had collected a security deposit from

this third party. The landlord testified that when the third party learned that the tenant was not the owner of the rental unit, he declined to move into the rental unit.

The tenant testified that she had tried to arrange for another tenant to take over her lease with the landlord, and that she introduced the abovementioned third party to the landlord but agreed that the third party never moved into the rental unit. She did not testify why he did not move in. She denied that she collected a security deposit from the third party.

The landlord testified that he was unable to re-let the rental unit until January 1, 2020.

The landlord argues that he was deprived of one full month's notice to end the tenancy, as he is entitled to under the Act.

The tenant argued that the landlord never told her that she needed to give him one month's notice, and had he told her this, should would have stayed in the rental unit until November 15, 2019 (thus giving him one month notice from when she says she gave notice to end the tenancy by text message).

### **Analysis**

Section 45(1) sets out how a tenant may end a month to month (also called a "periodic") tenancy. It states:

#### **Tenant's notice**

**45(1)** A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

So, if a tenant gives a landlord notice to end a period tenancy on October 13, 2019, the soonest the tenancy could end would be November 30, 2019 (that is, the day before rent is payable for the month of December). The Act does not permit the tenant to give notice to end a tenancy in the middle of a month.

As such, it is not necessary for me to determine whether the tenant gave notice to the landlord that she was ending the tenancy on October 13 or on October 26, 2019. Under

either instance, the soonest the tenancy would be permitted to end is November 30, 2019.

As such, I find that the tenant did not give the landlord sufficient notice to end the tenancy. It is not the landlord's responsibility to inform the tenant of how much notice she is required to provide him. Rather, it is each party's responsibility to understand their obligations under the Act.

I find that the tenant breached section 45(1) of the Act, and that, as a result of this breach the landlord suffered a loss of one month's (November's) rent. As the tenant did not move out of the rental unit until November 1, 2019, it is not reasonable to expect the landlord to have located a replacement tenant for the month of November.

In the absence of contrary evidence from the tenant, I accept the landlord's evidence that the third-party prospective tenant introduced to the landlord by the tenant declined to move into the rental unit upon learning that the landlord, and not the tenant, was the owner of the rental unit. I have heard no evidence to suggest that this action was caused by any act of the landlord.

As such, I find that the landlord successfully attempted to minimize his loss as a result of the tenant's breach.

I order the tenant to pay the landlord \$1,700 in compensation for the loss of November 2019 rent.

As the landlord has been successful in this application, he is entitled to recover his filing fee (\$100) from the tenant.

**Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$1,800.

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 6, 2020

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Residential Tenancy Branch