



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, SS, FF

### Introduction

The landlord applies to recover rent claimed to be owed.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the tenant owe the landlord money for rent?

### Background and Evidence

The rental unit is a two bedroom or one bedroom and “den” portion of a house. There is a second rental unit in the home, rented to others by the same landlord.

There is no written tenancy agreement. The landlord says she prepared one but the tenant refused to sign it. The tenant says he was never shown a tenancy agreement.

The parties agree the tenancy started in July 2015. The landlord says it started on July 21; the tenant says July 26.

The tenant paid the landlord the first month’s rent and an \$1100.00 security deposit (perhaps half of that was as a pet damage deposit). He says he moved in on July 26.

The tenant paid a monthly rent of \$1100.00 thereafter. In late September (according to the tenant) or early October (according to the landlord), the tenant gave verbal notice that he would be moving out October 26, 2015. He says he moved out on that date. The landlord says he moved out October 29.

Both parties sought out new tenants to replace this tenant. The landlord succeeded in obtaining a new tenant starting November 2, 2015.

The tenant did not provide a forwarding address after he left. The landlord did not return his deposit.

The tenant brought an application for return of the deposit. The file number for that application is shown on the cover page of this decision. A hearing was conducted June 7, 2016. The landlord failed to attend though duly served. The tenant's application was dismissed with leave to reapply, the arbitrator holding that the tenant had not provided the landlord with a forwarding address in writing and so his application was premature.

The tenant provided that address shortly after that hearing and the landlord brought this application.

The landlord submits that she and the tenant entered into a "long term" tenancy and therefore the rent was only \$1100.00 per month. She says that in the case of "short term" tenancies she charges \$1500.00. Since the tenant only stayed for a short term, she says the tenant must pay her the difference between the \$1100.00 per month he paid and the \$1500.00 he should have paid as a short term tenant, for the three months he was there; an amount of \$1200.00. Additionally, she says, he must pay a prorated amount for the seven days he overstayed past October 27, 2015; an amount of \$350.00.

The tenant testifies that there was no agreement about the length of the tenancy and that the landlord has promised him his \$1100.00 deposit money when he was leaving.

### Analysis

The first question is; what was the rent?

The landlord has put herself in a very difficult position by not having a written tenancy agreement with the tenant, as the *Act* requires of her. Normally, such a document is prepared and signed by the parties before a tenant is given possession of the rental

unit. It is apparent from the various tenancy agreements with her other tenants that the landlord submitted, that she has an extensive standard agreement that she uses. However, the tenant here did not sign the equivalent agreement. The landlord's general practice in obtaining a standard written agreement with her other tenants cannot make the terms of that standard written agreement applicable to this tenant, who has not signed it.

I find that in the absence of a written agreement, she has not demonstrated that this tenancy was a long term tenancy or anything other than a month to month tenancy.

The landlord has not proved on a balance of probabilities that the monthly rent was other than what the tenant paid; namely \$1100.00 or that there was any agreement with the tenant to pay a higher rent if he stayed only a "short term." I find \$1100.00 to have been the rent and not \$1500.00.

The second question relevant to this matter is when the tenancy started and, additionally, when rent was due. The tenant says he moved in early, on July 26, 2015 and that rent was due on the first of each month. The landlord says the tenant moved in July 21 and the rent was due on the 21<sup>st</sup> of each month.

The landlord presented a draft tenancy agreement she had prepared for this tenancy. It shows that though the term of the tenancy was expected to run from July 21, 2015, the rent was due on the first of each month. Indeed all of the agreements she submitted contain a standard clause stating that rent was due on the first of each month despite the start date of the tenancy.

On this evidence I find that whether the tenant moved in July 21 or July 26, it is most likely he was to pay his rent on the first of each month.

Did the tenancy end as a result of the tenant's verbal notice?

Section 45(1) of the *Act* provides that a tenant may end a month to month tenancy by giving a notice to take effect at the end of the following rental period. Section 52 requires that for such a notice to be effective it must be in writing and signed by the tenant.

There are no exceptions to the s. 52 requirements.

It follows that the tenant's verbal notice was not an effective notice to end the tenancy. Though he moved out at the end of October, contractually he was still obliged to pay rent as it came due on the first of each month, including November 1, 2015.

The landlord accepted that the tenant was moving and, in an effort to minimize her loss, was able to re-rent the premises from November 2, 2015.

In the circumstances, the landlord has suffered a loss of rental income of one day in November. I award her \$36.67 for that loss.

In result, the landlord is entitled to an award of \$36.67. As success was divided in this matter, I authorize the landlord to recover \$50.00 of her filing fee. She will have a total award of \$86.67.

I authorize the landlord to retain \$86.67 from the \$1100.00 of deposit money she still holds.

The tenant will have a monetary order against the landlord for the remainder of deposit money in the amount of \$1013.33.

### Conclusion

The landlord's application is allowed in part. She may retain \$86.67 from the \$1100.00 deposit money and the tenant will have a monetary order for the remainder of \$1013.33.

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: December 28, 2016

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Residential Tenancy Branch