



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and her advocate.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 16, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of rent pursuant to Sections 44, 67, and 72 of the *Act*.

### Background and Evidence

The tenant testified the tenancy began on October 1, 2015 on a month to month basis for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid.

The tenant testified that the tenancy ended on March 21, 2016 when there was a fire in the residential property that rendered the rental unit uninhabitable. The tenant testified that she had paid rent in full for the month of March prior to the fire.

The tenant acknowledged that she has received her security deposit back but she now seeks return of a per diem based rent from March 21, 2016 to the end of the month of March or 10 days, in the amount of \$322.58.

### Analysis

Residential Tenancy Policy Guideline #34 states a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into.

Guideline #34 goes on to say that the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

Based on the tenant's undisputed testimony, I find that the tenancy was frustrated as of March 21, 2016 and the tenant is entitled to the return of rent paid for the days March 21, 2016 to March 31, 2016.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$322.58** comprised of the return of rent as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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 08, 2017

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Residential Tenancy Branch