



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNRL – S, FFL

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1617 for loss of rent.
- b. An order to retain the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Notice of Dispute Resolution Hearing/Application for Dispute was served on the Tenant by mailing, by registered mail to where the Tenant resides on December 18, 2017. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence:

On November 4, 2017 the parties entered into a month to month written tenancy agreement that provided that the tenancy would start on December 1, 2017. The rent was \$1617 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$808.50 at the start of the tenancy.

On November 16, 2017 the tenant orally advised the building manager and the representative of the landlord that she did not intend to move in. On November 26, 2017 the tenant e-mailed the landlord confirming that she did not intend to move in.

The landlord testified they immediately advertised but they were not able to find a Tenant for December and lost rent for that month. A new tenant was eventually found who moved in on January 15, 2018.

The tenant testified as follows:

- She decided not to move in because of mental health issues. She would be living 30 minutes away from her family and she decided the support of her family was necessary at this time.
- She produced a letter from her counsellor that states that moving into accommodation 30 minutes away from her family was detrimental to her health.
- She made the decision in early November to move in based on emotion and it was not a good decision at this time

The landlord responded saying the Tenant had been pre-approved in 2016 but decided not to move in at that time. She had a lengthy discussion with the Tenant prior to the tenant signing the agreement as to whether the tenant really wanted to move in. The Tenant's sister had talked to the landlord on two separate occasions about trying to facilitate the rental of the suite. The tenant told the landlord she was happy and excited about moving in. The written tenancy agreement was signed after these discussions.

Analysis - Monetary Order and Cost of Filing fee:

Section 45(1) of the Residential Tenancy Act provides as follows:

**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.

The tenancy agreement contained a similar provision requiring the tenant to give a clear months notice.

While one can sympathize with the Tenant's situation, the Act requires the tenant to give a clear month notice and it does not give the arbitrator discretion to relieve the tenant from this obligation in a situation such as this. I determined the landlord sufficiently attempted to mitigate its loss by trying to re-rent the rental unit but was not able to find a new tenant and lost rent for the month of December 2017.

I granted the landlord a monetary order in the sum of \$1617 plus the sum of \$100 for the cost of the filing fee for a total of \$1717.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$808.50. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$908.50.

Conclusion:

I ordered that the Landlord shall retain the security deposit of \$808.50. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$908.50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this 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 final and binding on both parties.**

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 24, 2018

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Residential Tenancy Branch