



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for unpaid rent and damages pursuant to section 67 of the *Act*;
- authorization to retain the security deposit for the tenancy in partial satisfaction of the monetary award; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, present affirmed testimony and make submissions. The tenant EJ primarily spoke on behalf of both named tenants (the "tenant").

As both parties were in attendance I confirmed service. The parties testified that they were in receipt of the respective materials. I find that the parties were served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This fixed term tenancy began in September, 2016 and was scheduled to end on September 30, 2017. The rental unit is the lower suite in a townhouse with another rental unit upstairs. The tenant testified that she vacated the rental unit on April 30, 2017 without providing notice to the landlord. The landlord said he discovered that the tenant had vacated the rental unit on May 25, 2017.

The monthly rent was \$1,200.00 payable on the first of each month. The addendum to the tenancy agreement provides that the tenant is responsible for paying electricity. The agreement states that the tenant is responsible for paying 25% of the electricity bill when the upper unit is occupied and 90% of the bill when the upper unit is vacant. A security deposit of \$600.00 was paid at the start of the tenancy and is still held by the landlord.

The landlord testified that he discovered that the tenant had vacated the rental unit and promptly listed the unit online. The landlord said that while he had multiple showings he was not able to find a new tenant for the unit until August 1, 2017. The landlord seeks a monetary award in the amount of \$3,600.00 for the rental arrears for May, June and July, 2017.

The landlord claims that the rental unit required cleaning after the tenant vacated and said that the cost of cleaning was \$100.00.

The landlord testified that there was considerable confusion regarding the electricity bills. The landlord stated that the reference in the addendum that the tenant is liable for paying a portion of the bill was based on a mistaken assumption that there was one meter for the whole rental building. The parties gave evidence that the tenant opened an account for the electricity and paid the full amount of each bill despite the tenancy agreement stating she is only liable for paying a portion of the electricity bill.

The landlord said that it was later discovered that there are individual electricity meters for each of the rental units and therefore the tenant should be paying the full amount for the meter corresponding to her rental unit. There was no change made to the tenancy agreement or the addendum to reflect this new information.

The landlord said that while the tenant paid the full amount of the electricity bill throughout the tenancy, they have been charged by the utility company the amount of \$640.43. The landlord said that he believes this charge arises because the utility company reimbursed the tenant the amount of the bills she paid and is applying the

charges against them. The landlord seeks a monetary award for the amount of this charge.

The tenant testified that she vacated the rental unit without giving notice to the landlord as she felt threatened by the landlord. The tenant said that the landlord indicated to her that he would be issuing a Notice to End Tenancy at some point and she chose to vacate pre-emptively. The tenant confirms that she did not pay any rent since moving out on April 30, 2017. The tenant states that she has not been reimbursed by the electric company and has no knowledge of the landlord's billing. The tenant said that she paid the full amount of the bill and believes that pursuant to the tenancy agreement the landlord should be reimbursing her for some portion of the bills paid.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 7 of the *Act* explains, "If a tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

Section 45 (2) of the *Act* provides that a tenant may end a fixed term tenancy by giving the landlord notice effective on a date that is not earlier than the date specified in the tenancy agreement and is the day before the day in the month that rent is payable in the tenancy agreement. In this case, the parties gave evidence that the tenant did not provide notice and vacated the rental unit on April 30, 2017. The landlord discovered this on May 25, 2017.

I find that the central submission of the tenant is that the landlord's conduct and words gave rise to the tenant's right to end the fixed term tenancy on a date earlier than specified under the tenancy agreement pursuant to section 45 of the *Act*. The tenant

said that the landlord intended to issue a Notice to End Tenancy and that she felt threatened by his demeanor. I find that the simple spectre of being issued a Notice to End Tenancy at some point in the future does not give the tenant the right to end a fixed term tenancy earlier than specified.

Furthermore, I find that there is insufficient evidence to find that the landlord's conduct was such that it would allow the tenant to end the tenancy. While the tenant may have felt anxiety and stress from her dealings with the landlord, I find that does not excuse her from her obligations under the *Act*.

Section 26(1) of the *Act* provides that the tenant must pay the rent when due regardless of whether the landlord complies with the *Act*. In this case, as the tenancy was ongoing the tenants were obligated to pay the full rent amount. The tenants chose to break their fixed term tenancy agreement and vacated the unit but they were still required to pay their monthly rent.

Based on the totality of the evidence submitted I find that the tenants did not act reasonably by choosing to vacate the rental unit without providing any notice to the landlords. The tenants were still bound by the terms of the tenancy agreement. As such, I find that the landlord is entitled to a monetary award for the monthly rent amount.

Residential Tenancy Policy Guideline 5 states that while it is not necessary that the party making a claim do everything possible to minimize the loss, some reasonable efforts must be taken. The Guideline further provides that, "Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable."

I accept the landlords' evidence that the tenant's sudden breach of the fixed term tenancy agreement caused some loss. However, I find that there is insufficient evidence that the landlords took reasonable steps in order to mitigate their rental income loss. There is insufficient evidence that the landlords listed the rental unit to find a new occupant in due course. While the landlord testified that they discovered the tenants had vacated the rental unit on May 25, 2017 and were only able to find a new tenant for August 1, 2017, I do not find it reasonable that an occupant for the rental unit could not be found for two months.

I accept the landlords' evidence that they discovered the rental unit was vacant on May 25, 2017. Even if the rental unit required repairs and cleaning before a new tenancy could begin, I find that the landlords could have taken steps to advertise for a new

tenant who would take occupancy by July 1, 2017. The landlord failed to provide sufficient evidence to show that reasonable efforts were taken to mitigate their losses. The landlord testified that the rental unit was advertised online and he arranged for multiple showings but did not submit written evidence of these steps. The landlord has not provided sufficient evidence to show the steps that were taken to find another tenant. Under these circumstances, as there is insufficient evidence to show that the landlords have taken reasonable steps to mitigate their loss of rental income I find that a monetary award of \$2,400.00, the equivalent of two month's rent, is appropriate.

I find there is insufficient evidence in support of the landlord's monetary claim for the utility bills. The landlord testified that the tenant paid the electricity during the tenancy. I find that the landlord has not provided anything more than his conjecture and supposition that the tenant was reimbursed all of her utility payments resulting in a charge to the landlords. I find that the landlords' submission does not have the air of reality. I find it unlikely that a public utility company would reimburse all of the payments received from a tenant and then pass along the charge to a landlord. As I find there is insufficient evidence in support of this portion of the landlord's claim, it is dismissed.

I find that the landlords have not provided sufficient evidence in support of his claim for cleaning costs. The landlord claims \$100.00 under this head but has given no indication of how he arrives at this figure, provided no documentary evidence to show this was the cost of cleaning and provided little information as to the condition of the rental unit. As I find there is insufficient evidence in support of this portion of the landlord's claim, it is dismissed.

As the landlords were partially successful in their claim I find they are entitled to recover the filing fee for their application from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' \$600.00 security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

### Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,900.00 under the following terms, which allows the landlords to recover rent, and the filing fee for their application:

Item	Amount
Loss of Rental Income (2 Months)	\$2,400.00
Filing Fees	\$100.00
Less Security Deposit	-\$600.00
<b>Total Monetary Order</b>	<b>\$1,900.00</b>

The tenants must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: February 1, 2018

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Residential Tenancy Branch