



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (The “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking retention of the Tenant’s security deposit and a Monetary Order for damage to the rental unit, loss, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Agent testified that the Application and the Notice of hearing were sent to the Tenant by registered mail and that they were signed for and received by the Tenant on January 19, 2018. The Agent As a result, I find that the Tenant was served with the Application and Notice of Hearing on January 19, 2018, the date they received it by registered mail.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be e-mailed to the Agent at the e-mail address provided in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order and to retain all or a part of the Tenant's security deposit for damage to the rental unit, money owed, and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

### Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the one year fixed-term tenancy commenced June 1, 2017, and was set to end May 31, 2018. The tenancy agreement indicates that rent in the amount of \$1,100.00 is due on the first day of each month and that the Tenant is responsible to pay the Landlord 22% of the electricity and gas bills. The tenancy agreement indicates that a \$550.00 security deposit was paid, which the Landlord still holds.

The Agent testified that on October 10, 2017, they received written notice that the Tenant was ending the fixed-term tenancy early on November 15, 2017, and provided a copy of this written notice dated October 6, 2017. The Agent testified that at the time the Tenant gave notice, the Tenant also agreed in writing that the Landlord could retain the security deposit for damage to the deck and for breaking the fixed-term tenancy agreement.

The Agent testified that the Tenant vacated the rental unit on October 11, 2017, and that the Landlord is seeking monetary compensation in the amount of \$1,879.18 for loss of rent, outstanding utilities, damage to the rental unit, and recovery of the \$100.00 filing fee, as well as an order for Landlord to retain the tenant's security deposit to offset the above noted amount.

With regards to loss of rent, the Agent testified that the Tenant paid full rent for October 2017, but did not pay any rent for November, 2017. The Agent stated that although they were able to secure a suitable new tenant for November 15, 2017, the date the Tenant gave as the end of their tenancy in their written notice, they were unable to secure the same amount of rent. The Agent testified that they originally posted the unit for rent at \$1,150.00, and when there was no interest, they dropped the rental price to \$1,100.00. Despite the price drop, the Agent testified that they were only able to secure a suitable occupant at a monthly rental amount of \$950.00 due to the geographic location of the rental unit and the weather in that area during that time. The Agent submitted copies of the rental postings for my review and testified that the new tenant only paid \$475.00 (half a month's rent) for November 15-November 30, 2017.

As a result of the above, the Agent testified that the Landlord is seeking \$9.44 in advertising costs and \$625.00 in lost rent for November. The Agent testified that the Landlord is also seeking \$900.00 in lost rent for December 2017 – May 2018, as there is a \$150.00 per month difference in the amount of rent due by the Tenant under the fixed-term tenancy agreement and the amount of rent payable by the new occupant for the duration of the defaulting Tenant's fixed-term.

With regards to damage to the rental unit, the Agent sought \$145.00 to remove and flip deck boards stained and damaged by the Tenant. The Agent submitted a quote for this work in the amount of \$145.01 as well as written documentation from the Tenant that the Landlord was entitled to retain a portion of the security deposit for this damage.

The Agent also testified that the Tenant owes \$109.18 for outstanding utilities and provided copies of the utility bills and a break-down of the costs claimed for these utilities.

### Analysis

Section 45 of the Act states the following with regards to a tenant's notice to end tenancy:

#### **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.
- (2) A tenant may end a fixed term 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,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) 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 obligations of both parties under the *Act* began on May 28, 2017, the date the tenancy agreement was signed. Based on the one year fixed term tenancy agreement in the documentary evidence before me, May 31, 2018, is the earliest the Tenant could have lawfully ended the tenancy. As a result, I find that the Tenant breached the fixed-term tenancy agreement when they ended the tenancy early on November 15, 2017.

Residential Tenancy Policy Guideline (the "Policy Guideline") #3 states that damages awarded for loss of rent are awarded in an amount that puts the landlord in the same position as if the tenant had not breached the agreement. In general, this includes compensation up to the earliest time that the tenant could have legally ended the tenancy or the difference between what was paid or owed by the defaulting tenant and what the landlord was able to re-rent the unit at for the remainder of the un-expired term of the tenancy agreement. Policy Guideline #3 also states that the landlord's claim is subject to the duty to mitigate loss by re-renting the premises at a reasonably economic rental rate.

Based on the testimony and documentary evidence before me, I find that the Landlord mitigated the loss of rent by posting the unit for re-rental as soon as reasonably possible and by incrementally dropping the price of the rental unit as needed to secure a new occupant at a reasonably economic rental rate. I also accept the Agent's testimony that due to the geographic location of the rental unit and the weather in that area during the winter, they were unable to re-rent the unit for more than \$950.00 per month.

Based on the tenancy agreement, I find that the tenant is responsible to ensure that the Landlord receives \$1,100.00 in rent each month for the duration of the fixed-term and I therefore grant the Landlord's claim for \$1,525.00 in lost rent from November 1, 2017, to May 31, 2018. Although the Landlord also sought \$9.44 in advertising costs during the hearing, I decline to grant the Landlord recovery of these fees as they were not included in the total monetary amount sought by the Landlord in the Application.

Based on the tenancy agreement, I also find that the Tenant was responsible to pay the Landlord 22% of the gas and electricity bills each month. In the absence of evidence to the contrary, I accept the Agent's testimony that the Tenant owes \$109.18 in outstanding utilities. I also accept the Landlord's testimony and documentary evidence that the Tenant has caused damage to the deck. Although the quote for repair of these damages estimates the cost at \$145.01, as the Landlord has only sought \$145.00 for these repairs, that is the amount I find he is entitled to.

Based on the above, I find that the Tenant owes the Landlord \$1,779.18 for lost rent, outstanding utilities, and damage to the deck. Pursuant to section 72 of the *Act*, the Landlord is also entitled to recovery of the \$100.00 filing fee, and to retain the security deposit paid by the Tenant to offset the above noted amounts.

As a result, I therefore grant the Landlord a Monetary Order in the amount of \$1,329.18; \$1,779.18 for damage and loss, plus the \$100.00 filing fee, less the \$550.00 security deposit held by the Landlord.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,329.18. The Landlord is provided with this Order in the above terms and the Tenant 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: March 5, 2018

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Residential Tenancy Branch