



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      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”), for a Monetary Order for unpaid rent, retention of the Tenant’s security deposit, 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”), the Tenant, and the Tenant’s Assistant (the ‘Assistant’), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision. At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the hearing.

### Preliminary Matters

At the outset of the hearing the Agent testified that they secured a new tenant for the rental unit effective December 15, 2017. As a result, the Agent reduced the monetary claim for loss of rent from \$2,146.66 to \$1,378.92.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for loss of rent and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Is the Landlord entitled to retain all or a part of the Tenant's security deposit and pet damage deposit pursuant to section 72 of the *Act*?

### Background and Evidence

The parties were in agreement that a one year fixed term tenancy agreement was signed on October 12, 2017, for a tenancy commencing November 15, 2017, and ending November 30, 2018. The parties agreed that a \$700.00 security deposit and a \$700.00 pet damage deposit were paid, that rent in the amount of \$1,400.00 was due on the first day of each month, and that pro-rated rent in the amount of \$746.66 was due for the period of November 15, 2017 – November 30, 2017. The parties agreed that the Tenant was never able to move in for medical reasons and that written notice to end the tenancy was received by the Agent from the Tenant on November 3, 2017.

The Agent testified that upon being notified that the Tenant was facing significant medical issues and may not be able to move-in, she requested that the Tenant provide written notice to end the tenancy so that the unit could be re-rented. The Agent stated that written notice was received on November 3, 2017, and that the unit was posted for rental on the property management website the same day or the following day. The Agent testified that the rental unit was advertised right away at the same rental rate and without any further restrictions but due to the time of year, the fact that the building has age restrictions, and the location of the rental unit above commercial properties, they had difficulty securing a tenant. The Agent testified that after several showings they were finally able to secure a suitable tenant for a tenancy commencing December 15, 2017. As a result, The Agent testified that the Landlord is seeking \$1,378.92 in rent for November 15, 2017 – December 14, 2017.

The Tenant conceded that the Landlord is entitled to rent for November 15, 2017 – November 30, 2017, but disagreed that she owes any money for December, 2017. The Tenant argued that although the Landlord did not receive written notice that she was ending the tenancy until November 3, 2017, the Agent was aware of the likelihood that she would not be able to occupy the unit earlier than the date she received written notice. The Tenant also argued that the Landlord and Agent did not make enough effort to get the unit rented quickly and only advertised on one property management site despite the fact that she offered to pay for additional advertisement.

## 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.

As the parties agreed that the Tenant entered into a one year fixed term tenancy agreement with an end date of November 30, 2018, the earliest the Tenant could have lawfully ended the tenancy is November 30, 2018. As a result, the Tenant breached the fixed-term tenancy agreement when they ended the tenancy early.

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 made reasonable attempts to mitigate the loss of rent when they posted the unit for rent either the day they received the Tenant's written notice to end tenancy or the following day. Although the Tenant stated that they did not see any advertisements for the rental unit for several days after they gave notice, I do not find that this testimony is sufficient evidence to establish that the Landlord did not post the unit for rent when the Agent testified they did.

The Tenant argued that the Landlords did not make strong enough efforts to re-rent the unit in a timely manner as they did not post the unit for rent as soon as they became aware that she may not be able to occupy the unit and only advertised it on one website. Despite the Tenants belief that the Landlord should have posted the unit for rent earlier, the parties agreed that the Landlord did not receive written notice that the Tenant was ending the tenancy until November 3, 2017. As a result, I find that the Landlord and Agent attempted to mitigate the loss of rent by posting the unit for re-rental as soon as reasonably possible. I also find that the Landlord was not obligated to advertise the unit for rent in the manner preferred by the Tenant and I accept that their advertisement, which resulted in the procurement of a suitable new tenant in just over a month, was sufficient to meet their duty to mitigate the loss by re-renting the premises at a reasonably economic rent amount.

While the Tenant also requested compassion due to her medical situation, I note that I am bound by the *Act* which does not excuse parties from their obligations under the *Act* or a tenancy agreement on the basis of hardship.

Although the Tenant never occupied the rental unit, the obligations of both parties under the *Act* began on October 12, 2017, the date the tenancy agreement was signed. Based on the above, I therefore grant the Landlord's claim for \$1,378.92 in loss of rent from November 15, 2017, to December 15, 2017.

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 and pet damage deposit paid by the Tenant to offset the amounts owed for rent and the filing fee.

As a result of the above, I therefore grant the Landlord a Monetary Order in the amount of \$78.92; \$1,378.92 in lost rent, plus the \$100.00 filing fee, less the \$1,400.00 held in deposits by the Landlord.

Conclusion

Pursuant to sections 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$78.92. 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.

The Landlord is also entitled to retain, in full, the \$700.00 security deposit and the \$700.00 pet damage deposit paid by the Tenant.

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 2, 2018

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Residential Tenancy Branch