



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FFL  
                              MNSD, FFT

### Introduction

This hearing dealt with applications from both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenants' security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38 of the *Act*; and
- recovery of the filing fee for the application from the tenants pursuant to section 72 of the *Act*.

The tenants applied for:

- authorization to obtain a return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for the application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant S.A. attended the hearing on behalf of the tenants.

As both parties were present, service of documents was confirmed. The parties each testified that they were in receipt of all evidentiary materials. Based on the undisputed testimonies of the parties, I find that both tenants were served with the landlord's

application and evidence, and the landlord was served with the tenants' application and evidence in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment to the Tenants' Application for Dispute Resolution

At the outset of the hearing, both parties agreed to an amendment to correct an error in the tenants' Application for Dispute Resolution. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenants' the application to correct the spelling of the landlord's first name.

Preliminary Issue – Amendment to the Landlord's Application for Dispute Resolution

On November 15, 2017, the landlord submitted an amendment to his application for an additional monetary claim for damages related to a cracked mirror closet door and carpet cleaning. Residential Tenancy Policy Guideline 23. Amending an Application for Dispute Resolution explains the requirements for amendments under the Residential Tenancy Rules of Procedure, as follows:

*The rules require an amendment to be related to existing claims on the initial application. Under rule 2.3 (Related issues), arbitrators may dismiss unrelated claims with or without leave to reapply.*

I find that the claims for damages requested on the amendment are not related to the initial claim pertaining to unpaid rent. Further, I find that the amendment application was submitted without any information provided about the particulars of the damages, such as the costs incurred or receipts. A monetary order worksheet dated April 12, 2018 providing the particulars of the claim was eventually submitted into evidence, however this late submission unfairly prejudiced the tenants' ability to respond to these additional and unrelated claims. For these reasons, I dismiss the landlord's amendment application pertaining to damages, without leave to reapply.

Issue(s) to be Decided

Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Have the tenants established a monetary claim against the landlord for return of all or part or double the amount of the security deposit and interest?

Should either party be entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

A written tenancy agreement, signed by all parties on November 1, 2016 was submitted into evidence. Both parties agreed to the following facts provided in the written tenancy agreement. This tenancy began on December 1, 2016 for a fixed term ending on November 30, 2017. With respect to the options at end of the fixed term, the tenancy agreement shows that the following option was selected:

*At the end of this time the tenancy will continue on a month to month basis, or another fixed length of time, unless the tenant gives written notice to end the tenancy at least one clear month before the end of the term.*

Monthly rent in the amount of \$1,600.00 was payable on or before the first day of each month. A security deposit of \$800.00 was paid by the tenants at the start of the tenancy and continues to be held by the landlord.

The tenant testified that he provided the landlord with his forwarding address in writing at the time of the move-out inspection on November 1, 2017. The landlord confirmed that he received a post office box number as the tenants' forwarding address on that day.

Tenant S.A. confirmed that, on August 31, 2017, they received the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice). Tenant S.A. provided a copy of the landlord's Two Month Notice into evidence, which states an effective move-out date of November 30, 2017, indicating the following reason for seeking an end to this tenancy:

*All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenant testified that he accepted this notice and did not file an application with the Residential Tenancy Branch (RTB) to dispute this notice.

On October 1, 2017, the tenants provided the landlord with a written request to end the tenancy early effective October 31, 2017 and advised that they would not be paying rent for the month of October 2017 as they believed that rent for that month should be considered as the one month's rent compensation provided for under section 51(1) of the *Act* pursuant to a landlord issuing a Two Month Notice.

Tenant S.A. stated that although he acknowledged his tenancy agreement was for a fixed term ending November 30, 2017, he considered it to be a periodic tenancy because it did not contain a "vacate clause" and it would convert to a month to month tenancy after November 30, 2017. For this reason, Tenant S.A. thought that he could avail himself of section 50, which allows a tenant, who receives a Two Month Notice, to end a periodic tenancy early, as follows:

- 50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
  - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

On October 4, 2017, the landlord testified that he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) in the amount of \$1,600.00 as a result of the tenants' failure to pay rent for the month of October 2017. Tenant S.A. confirmed receipt of the 10 Day Notice and stated that he filed an application with the RTB to dispute the notice (file number noted on the coversheet of this decision) on October 6, 2017. A decision on this dispute was rendered on December 20, 2017 in which the arbitrator dismissed the tenant's application as the tenant had already vacated the rental unit and therefore the matter regarding whether or not the tenancy should continue was moot at that point.

On October 12, 2017, the landlord submitted a dispute application with the RTB to claim compensation from the tenants for unpaid rent, and to retain the security deposit in partial satisfaction of that claim. The landlord testified that it was his understanding that there are only limited provisions within the *Act* that allow a tenant to end a fixed term tenancy early and that the tenants did not meet those provisions. The landlord stated that he had advised the tenants that the month of November 2017 would have been provided to them for free as compensation for the Two Month Notice.

On December 20, 2017, the tenants submitted a dispute application with the RTB to claim the return of their security deposit. The tenants noted in their application that they believed they were also entitled to additional compensation equivalent to the amount of their security deposit for not receiving it within the 15 days provided for under section 38(1) of the *Act*.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must within 15 days of the end of the tenancy or receipt of the tenant's forwarding address, whichever is later, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that, should the landlord fail to comply with section 38(1), the landlord must pay the tenant double the security deposit.

As the landlord submitted his dispute application on October 12, 2017, specifically requesting to retain the security deposit in partial satisfaction against his claim of unpaid rent, and given that the tenancy ended October 31, 2017, I find that the landlord filed his application claiming against the security deposit in accordance with section 38(1) of the *Act*. Since I have found that the landlord has complied with the requirements of section 38(1) of the *Act*, the landlord may make a claim against the security deposit and is not required to pay the tenants double the amount of the security deposit.

Section 51(1) of the *Act* requires that a landlord who serves a tenant with a notice to end tenancy, such as a Two Month Notice, is to provide the tenant with the equivalent of one month's rent payable under the tenancy agreement as compensation – on or before the date the notice to end tenancy takes effect.

In this case, the parties provided undisputed testimony that the landlord served the tenants with a Two Month Notice with an effective date to end the tenancy on November 30, 2017. This coincided with the end date of the fixed term tenancy on November 30,

2017. Both parties also agreed that the tenants did not pay rent for the month of October 2017.

The dispute in this matter hinges on the tenants' position that they were entitled to end the fixed term tenancy early effective October 31, 2017 and therefore entitled to apply the one month's rent compensation, provided per section 51(1) of the *Act*, to the month of October 2017.

Section 45(2) of the *Act* sets out the requirements that must be met for a tenant to end a fixed term tenancy, including that a tenant cannot end a fixed term tenancy earlier than the end date of the tenancy as specified in the tenancy agreement, as follows:

- 45 (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.

[Emphasis added]

However, section 45.1(2) does provide exceptions to allow a tenant to end a fixed term tenancy prior to the end date, as follows:

- 45.1 (2) A tenant is eligible to end a fixed term tenancy under this section if a statement is made in accordance with section 45.2 [*confirmation of eligibility*] confirming one of the following:
- (a) if the tenant remains in the rental unit, the safety or security of either the tenant or a dependent of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant;
  - (b) the tenant has been assessed as requiring long-term care;
  - (c) the tenant has been admitted to a long-term care facility.
- (3) A tenant under this section 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, 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 tenants did not submit any evidence to suggest that they applied to end their fixed term tenancy early based on the allowable grounds provided for under section 45.1(2) of the *Act*. Therefore, I find that the tenants were not entitled to end their fixed term tenancy early under the section 45.1(2) allowable grounds.

Section 50 of the *Act* allows that if a landlord gives a tenant notice to end a periodic tenancy under section 49, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice.

As noted above, this tenancy was for a fixed term as per section 1 of the *Act*, that was scheduled to end on November 30, 2017. As such, I find that the tenants were not allowed to end the tenancy early, as if they were in a periodic tenancy, as defined in section 1 of the *Act*, and allowed for under section 50.

As such, I find the obligations of the parties for the tenancy ended on November 30, 2017.

However, the tenants were entitled to compensation equivalent to the amount of one month's rent as a result of having received the Two Month Notice.

As I have determined that the earliest the tenancy could end was November 30, 2017, I also find that the tenants would have therefore been required to pay rent for the month of November less the amount of the compensation allowed under section 51. Per the entitlements provided for under section 51(1) of the *Act*, I find that the tenants were entitled to forego paying rent for the month of November 2017, which they did.

I find that there is insufficient evidence before me to conclude that the tenants had any other right to withhold rent for the month of October 2017, and therefore they remained obligated to pay rent when due on October 1, 2017.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$1,600.00 for unpaid rent for the month of October 2017.

The landlord continues to retain the tenants' security deposit of \$800.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$800.00 in partial satisfaction of the monetary award, and I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing.

Further to this, as the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenants. A summary of the monetary award is provided as follows:

<b>Item</b>	<b>Amount</b>
Amount of unpaid rent owing to the landlord as a monetary award	\$1,600.00
Landlord to retain security deposit in partial satisfaction of monetary award	(800.00)
Remaining amount of unpaid rent owing to the landlord	= 800.00
Recovery of filing fee for this Application	+ 100.00
<b>Total Monetary Order in Favour of Landlord</b>	<b>\$900.00</b>

Having made a finding that the landlord is entitled to retain the security deposit in partial satisfaction of unpaid rent, I dismiss without leave to reapply the tenants' application for the return of their security deposit, in its entirety.

### Conclusion

I order the landlord to retain the \$800.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$1,600.00 for unpaid rent owing for the month of October 2017.

I also issue a Monetary Order in the landlord's favour against the tenants in the amount of \$900.00 in satisfaction of the remaining amount owing in unpaid rent, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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's application to amend his original claim to include a monetary award for other losses and damages arising out of this tenancy, is dismissed without leave to reapply.

The tenants' application is dismissed without leave to reapply, in its entirety.

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: June 4, 2018

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Residential Tenancy Branch