



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes          FFL MNRL-S

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

A representative for each party attended the hearing. A property manager attended on behalf of the landlord and one of the two co-tenants was also present. Both were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The landlord testified that the tenants were each personally served with the landlord's Application for Dispute Resolution ("ADR") package. Tenant JM confirmed that he and his co-tenant received the landlord's ADR and evidence.

### Issue(s) to be Decided

Is the property owner entitled to a monetary order for unpaid rent?  
Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

This one year fixed term tenancy began on May 15, 2017. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The tenancy ended on October 31, 2017 when the tenants vacated the rental unit and returned the keys to the unit. A rental amount of \$1,925.00 was payable each month. The landlord testified that tenants did not provide sufficient notice and therefore the landlord was unable to re-rent the property. The landlord sought \$3,850.00 in rent and rental loss as a result of the tenants' early end of the fixed term tenancy. The landlord testified that she continues to hold the tenants' \$962.50 security deposit.

Tenant JM testified that the rental unit was not liveable. He testified that there were ongoing issues with the condition of the home. He testified that he and his co-tenant attempted to make their own repairs. He also testified that the landlord did not address the repairs that they requested. Tenant JM testified that the ceiling collapsed in their rental unit leaving a very large hole in their ceiling. He also testified that there was asbestos in the walls of the rental unit and rats in the apartment.

In response, the landlord testified that the ceiling repair was done almost immediately. She stated that it looked awful but it there was no asbestos and a restoration company addressed the repairs. The landlord referred to emails submitted for this hearing where she responds to the tenants' complaints and requests almost immediately. She provided email communication between the tenants and herself regarding rats as well as regarding asbestos. She testified that when the hallway ceiling damage occurred, the tenants stated that they could not live in the building anymore.

The landlord gave undisputed testimony to clarify that the hole in the ceiling was not in the rental unit but in the entrance hallway of the building. She testified that there was no danger to the tenants as the apartment building is a walk-up and the tenants could access the stairs without passing under it.

The landlord testified that the tenants gave notice that they would vacate the rental unit only "informally" on approximately October 25, 2017. The landlord testified that she never received written notice from the tenants. The tenants vacated before October 31, 2017. The landlord testified that she attempted to re-rent the unit including posting the unit for rent on the company website and two other regularly used rental websites. She testified that a walk through was conducted with the tenants before they provided the keys to the unit. She testified that the unit had to be fully cleaned after the tenants vacated. She testified that she posted the unit for rent on October 27, 2017 but there was very little interest in November and December 2017. She testified that the unit was re-rented for January 1, 2018. The landlord sought to recover the rental loss for November and December 2017 as their short notice and the condition of the unit made it difficult to rent any earlier.

The landlord testified that the rental apartment building is 100 years old. She testified that the landlord does their best to maintain the building as issues arise. She testified that the units are in good condition. The landlord submitted that the tenants broke their fixed term lease and that the notice would not have been sufficient even if this were a month-to-month tenancy. The landlord also stated that the failure to provide proper written notice and the condition of the unit made it difficult and time consuming to re-rent.

### Analysis

Section 67 of the *Act* establishes that if loss results from a tenancy, an arbitrator may determine the amount of that loss and order that party to pay compensation to the other party. In order to

claim for loss under the *Act*, the party claiming the loss bears the burden of proof. In this case, the landlord bears the burden of proving loss from a violation of the agreement or a contravention of the *Act* on the part of tenants. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss.

The tenants did not dispute that they entered into a fixed term tenancy agreement. The residential tenancy agreement shows that this tenancy was intended to continue for 1 year, until May 2018. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy as used in section 44 of the *Act*:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

A fixed term tenancy creates security for both parties to the agreement. Based on all of the evidence submitted at this hearing, I find that the tenants breached the conditions of the residential tenancy agreement by ending the tenancy before the pre-determined expiry date. I accept that the landlord made reasonable efforts to re-rent the tenants' unit for the same rental amount. I accept that the landlord has provided sufficient evidence to show that, after 2 unsuccessful months of advertising, she was able to re-rent the unit for January 1, 2018. I find that the landlord has proved her loss and that the loss is a result of the actions of the tenants in ending the tenancy before the end of the fixed term and earlier than the notice required even if this was not a fixed term tenancy. As the landlord made sufficient efforts to mitigate her loss and suffered a loss of \$1,925.00 per month for the 2 months prior to re-renting (November & December 2017), I find that the landlord is entitled to the \$3,850.00 in rental loss (\$1,925.00 x 2). The landlord did not seek a liquidated damages fee. I will not make a factual finding regarding the condition of the unit at move out because I am satisfied that the landlord made efforts to mitigate her loss by advertising before the end of October 2017.

I find, as noted above, that the documentary evidence supports the landlord's position. However, I also note that the landlord's testimony was more credible than the testimony of the tenants. The tenants omitted, from their testimony and from their application that the hole in the ceiling was in the hallway – not their rental unit. I do not accept their submissions that this hole or the other matters that the tenants raised resulted in an unliveable rental unit. I accept the testimony of the landlord in its entirety and I award the landlord a monetary order as follows,

<b>Item</b>	<b>Amount</b>
Rental Loss	\$1,925.00
Rental Loss	1,925.00
Less Security Deposit	-962.50
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order to Landlord</b>	<b>\$2,987.50</b>

As the landlord was successful in her application, I find that the landlord is entitled to recover their filing fee.

Conclusion

I issue a monetary order to the landlord in the amount of \$2,987.50.

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: July 11, 2018

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Residential Tenancy Branch