



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

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

The landlord applied for:

- A monetary order for unpaid rent and utilities pursuant to section 67;
- An order to retain the security deposit, pursuant to section 72;
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

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.

The tenant acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the tenant was served under section 89 of the *Act*.

### Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent and utilities?
- Is the landlord entitled to retain the security deposit?
- Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The parties agreed they entered into a fixed term tenancy beginning July 1, 2017 for one year with rent of \$620.00 a month payable on the first of the month. A copy of the agreement was entered into evidence.

At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$310.00 which is held by the landlord. The tenant has not provided the landlord with authorization to keep the deposit.

The tenant vacated the premises on January 1, 2018 and paid rent for the month of January 2018. The tenant did not provide notice. The landlord testified he learned on January 7, 2018 that the tenant had vacated the unit.

The tenant testified the reason she left was due to the landlord's failure to fix the exterior door of the building in which the unit was located. The tenant submitted photographs of the exterior door showing a crack in the wood intersecting the strike plate. She testified this crack caused the door not to close and lock properly; she said the door would swing open when other tenants exited through the door, causing her to feel unsafe when she was in her unit. The tenant said she asked the landlord to fix the lock many times and the landlord refused or failed to do so. The tenant testified the door in her unit locked properly.

The landlord denied the tenant's version of events. He testified that the tenant had complained once early in her tenancy about the lock, following which he fixed the lock. The landlord submitted a text from the tenant in August 2017 in which she said the lock worked. In response, the tenant testified the lock failed again afterwards and that the landlord failed to fix the lock when she complained again.

The tenant submitted no evidence in support of her claim she notified the landlord the lock was not working in the fall of 2017 or that the landlord failed to remedy the problem.

No condition inspection was conducted on moving in or moving out. No witnesses were called to testify with respect to the condition of the door.

The tenant testified she provided the landlord with her forwarding address in writing at the time she vacated. The landlord denied receipt of her forwarding address. No evidence was submitted with respect to the provision of the forwarding address.

The landlord testified he made efforts to locate a suitable replacement tenant as soon as the tenant vacated. The landlord said he asked other tenants to try to find a replacement tenant as well. However, the landlord provided no supporting evidence with respect to any of these efforts. He stated the unit was occupied again on April 1, 2018

The landlord stated the tenant owes \$79.71 in outstanding utilities. The landlord did not provide copies of any utility bills and the tenant denied owing any utilities.

The landlord claimed rent for the months of February and March 2018 as well as outstanding utilities and reimbursement of the filing fee, as follows:

ITEM	AMOUNT
Rent February 2018	\$620.00
Rent March 2018	\$620.00
Utilities outstanding	\$79.71
Reimbursement of the filing fee	\$100.00
<b>Total</b>	<b>\$1,419.71</b>

The landlord applied for dispute resolution on February 5, 2018.

### Analysis

I will only refer to relevant portions of the testimony and documentary evidence.

### *Tenant's Notice*

Section 45 (2) considers how a tenant ends a fixed term tenancy, stating:

#### ***Tenant's notice***

**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)*

The tenant did not provide the notice required under Section 45(2).

### *Material Term*

Section 45(2) states as follows:

*(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

The tenant claimed the landlord failed to provide a properly functioning exterior door to the unit and failed to correct the situation. However, the tenant provided no supporting evidence that the door failed to work properly, such as the testimony or statements of other tenants.

The burden of proof is on a balance of probabilities. Rule 6.6 of the Rules of Procedure provides as follows:

### **6.6 The standard of proof and onus of proof**

*The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.*

I have reviewed the evidence and testimony in light of the burden of proof. I find the tenant has not met the burden of proving that the landlord was in breach of a material term under section 45(3), that she notified him of the breach in writing, and that he failed to remedy the situation.

I therefore find the tenant was not entitled to end the fixed term tenancy for breach of material term and was required to provide notice under section 45(2).

### *Loss of Rent*

Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent, the landlord has a burden to prove the landlord made every reasonable effort to minimize losses:

#### ***Liability for not complying with this Act or a tenancy agreement***

*7 (2) A landlord or tenant 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.** (emphasis added)*

*Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent* provides information and policy statements with respect to claiming for loss of rent. The Guideline states, in part:

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.*

The landlord testified to efforts to find a replacement tenant in the months of January and February 2018 including asking existing tenants to help him. No particulars were provided by the landlord, such as copies of advertisements or names of websites on which he posted. The landlord testified the unit remained unoccupied until March 1, 2018.

As discussed, the landlord bears the burden of proving he has made reasonable efforts to mitigate the loss claimed. The burden of proof is on a balance of probabilities.

Considering the evidence provided by the landlord, the standard of proof and the onus of proof, I find the landlord did not provide sufficient evidence of his efforts to mitigate his loss.

I find the landlord knew by January 7, 2018 that the tenant had vacated. I find that if the landlord took reasonable steps, he should have found a replacement tenant for the vacant unit by mid-February 2018, a period of five weeks after the tenant vacated.

I therefore find the landlord is entitled to a monetary award for rent for one-half the month of February 2018 in the amount of \$310.00.

### *Utilities*

The landlord has submitted no supporting evidence with respect to his claim for outstanding utilities. I find that the landlord has not met the standard of proof with respect to this claim and I dismiss his claim without leave to reapply.

### *Security Deposit*

Section 38(1) provided that a landlord must bring an application for dispute resolution claiming against the security deposit within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing.

As the tenancy ended at the end of January 2018 and the landlord applied under section 38 to retain the security deposit on February 5, 2018, the tenant is not entitled to the doubling provisions under section 38(6) irrespective of the provision of the forwarding address.

I find the landlord is entitled to apply the security deposit to the monetary award pursuant to section 72.

### *Filing Fees*

I find the landlord is entitled to reimbursement of the cost of filing fees.

*Conclusion*

In conclusion, I find the landlord is entitled to a monetary order in the amount of \$100.00 calculated as follows:

ITEM	AMOUNT
½ rent for February 2018	\$310.00
Reimbursement of filing fee	\$100.00
Less security deposit	(\$310.00)
<b>TOTAL</b>	<b>\$100.00</b>

Conclusion

The landlord is awarded a monetary order in the amount of \$100.00.

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: October 4, 2018

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Residential Tenancy Branch