



# 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 was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on June 7, 2018 (the "Application"). The Landlords sought to recover money for unpaid rent and reimbursement for the filing fee. The Landlords sought to keep the security deposit.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord indicated she was seeking \$200.00 for cleaning and damage to the fridge. This was not clear from the Application. The Tenants confirmed they were not aware the Landlords were requesting \$200.00 for cleaning and damage to the fridge. I declined to consider this aspect of the claim given it was not clear in the Application and the Tenants therefore did not have sufficient notice that this was an issue. This aspect of the Application is dismissed with leave to re-apply.

The Tenants had filed evidence indicating they were making a counter claim. I told the Tenants that they must file their own Application for Dispute Resolution and that I would not consider their request.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenants confirmed they received the hearing package and Landlords' evidence.

The Landlord said she did not receive the Tenants' evidence. The Tenants testified that they put their evidence in the mailbox at the address for the Landlords as listed on the Application and that they did this on August 16, 2018. The Tenants said the package was returned.

The Landlord said the Landlords sold their home and the Tenants knew this. She said the Landlords were not living at the address listed on the Application on August 16, 2018. The Landlord confirmed that the Landlords never provided the Tenants with a new address for service.

I admitted the Tenants' evidence. I found the Tenants served their evidence on the Landlords in accordance with section 88(f) of the *Residential Tenancy Act* (the "*Act*"). Pursuant to section 90(d) of the *Act*, the evidence is deemed received by the Landlords on August 19, 2018. I find the Tenants complied with rule 3.15 of the Rules of Procedure.

I did not find it relevant that the Landlords moved or that the Tenants were aware of this. The Landlords listed their previous address as the address for service on the Application and never provided the Tenants with a new address for service. I find the Tenants were permitted to serve the evidence at the address listed in the circumstances.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Are the Landlords entitled to compensation for unpaid rent?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

#### Background and Evidence

Portions of a written tenancy agreement were submitted as evidence. The parties agreed the written tenancy agreement is accurate and agreed on the following. The tenancy agreement was between the Landlords and Tenants in relation to the rental unit. The tenancy started September 1, 2017 and was for a fixed term of one year ending September 1, 2018. Rent was \$1,200.00 per month. The Tenants paid a

\$600.00 security deposit and the Landlords still hold this. The agreement included an addendum with the following term:

5. Should the property ever be sold, the tenants shall receive appropriate notice under the tenancy act & will co-operate with the showing of the home. (Often buyers want to keep tenants if the property shows well & the tenants are co-operative)

Both parties agreed the Tenants vacated the rental unit May 31, 2018. Both parties agreed the Tenants provided their forwarding address on the Condition Inspection Report on May 30, 2018.

The Landlord testified that the Tenants participated in the move-in and move-out inspections.

The Landlords sought \$600.00 for loss of rent for June of 2018. The Landlord testified as follows in relation to this. The Tenants signed a one-year fixed term tenancy agreement. The fixed term did not end until September 1, 2018. The Tenants vacated the rental unit prior to the end of the fixed term. The house that the rental unit is in was sold. The purchasers had no intention of asking the Tenants to vacate and in fact wanted the Tenants to stay as that was part of the reason they purchased the house. She received a text message from the Tenants May 1, 2018 saying they were moving out and she asked for this in writing. She then received the notice dated May 2, 2018.

The Landlord further testified as follows. The Landlords did not look for new tenants for June because they had sold the home and the purchasers took possession July 1, 2018. The Landlords moved out of the house June 30, 2018. The purchasers had to look for new tenants and were able to find a tenant for July 1, 2018. The Tenants said they knew someone who was interested in the rental unit; however, they never provided a name or phone number for this person. Further, the Landlords were not willing to let just anybody rent the unit given it was their home at the time. In addition, the Landlords did not think it was fair to allow new tenants to move into the rental unit when the purchasers were taking possession of the home July 1, 2018 and were going to live in it. The Landlords did allow the purchasers to show the rental unit to perspective tenants.

Tenant S.C. testified as follows. The Tenants received notice that a realtor was coming to the house but never got notice that the house was being sold. He pointed to term five in the addendum. The Tenants gave notice that they were moving out by text May 1, 2018 and in writing on May 2, 2018. This was in part because the Landlords would not

allow the Tenants to run a respite program in the rental unit and in part because the Landlords sold the house and the Tenants did not know the new landlords. The Tenants did not have an agreement with the new landlords or know who they were.

Tenant S.C. further testified as follows. The Tenants wrote to the Landlord twice asking if she had someone to take over the rental unit because they knew someone who was interested in renting it from June 1, 2018; however, the Landlord never replied. The Tenants had people willing to sublet the rental unit. The Landlord did not give them any information about the purchasers wanting the Tenants to stay until the day they moved out.

Tenant E.C. testified that the Landlord was showing the rental unit May 4<sup>th</sup> and 5<sup>th</sup>. He said the Tenants believe the Landlords rented the unit for June 1, 2018. He said this belief was based on the fact the Landlord did not reply to their message about having someone who was interested in renting the unit for June 1, 2018.

The Tenants took the position that they had a right to move out because the house was sold because their tenancy agreement was with the Landlords not the purchasers. The Tenants could not point to any section of the *Act* that gave them this right.

In reply, the Landlord testified as follows. It was the purchasers who showed the unit to two potential tenants for July 1, 2018. Term five in the addendum refers to the Tenants receiving a Two Month Notice for Landlord's Use of Property if applicable.

The Landlord submitted a letter dated May 24, 2018 from the purchasers of the property indicating that their purpose for purchasing the house was to supplement their income with the rental unit and that they were happy to discuss continuation of the lease.

The Tenants submitted text messages showing the Landlord notified them by text April 16, 2018 that a realtor was coming to look at the house and that there would be a showing April 17, 2018.

The texts include the Tenants' May 1<sup>st</sup> text telling the Landlord they are moving out at the end of May. The texts include a text from the Landlord May 2, 2018 stating, "I'm not sure why u think that u have to move because we are selling the house?? The couple that looked at the house yesterday are wanting to keep you as tenants". The same text reminds the Tenants they signed a one-year fixed term tenancy and states the Tenants will be responsible for rent if the Landlords cannot find someone for June 1, 2018.

The texts include a text from the Tenants May 2, 2018 acknowledging that they were told the house was being sold April 16<sup>th</sup> or 17<sup>th</sup>.

There is a text dated May 19, 2018 from the Tenants asking if the Landlord has someone to take the rental unit. This text says nothing about the Tenants knowing someone who is looking for a rental unit or about subletting. The texts include one dated May 21, 2018 from the Tenants stating, "I was asking to know if I can poat [sic] the place, I have some one looking for accommodate".

The written notice to vacate was submitted as evidence. It is dated May 2, 2018. It states that the Tenants will be leaving by the end of May. It states that there are two reasons for leaving. First, the Tenants wanted to use the unit for a respite program but this was not permitted. Second, the Landlords sold the house without notifying the Tenants and they do not know what will happen with the new landlord.

### Analysis

Based on the testimony of the Landlord about the move-in and move-out inspections, I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24(1) or 36(1) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the end of the tenancy on May 31, 2018 to repay the deposit or claim against it. The Landlords filed the Application June 7, 2018, within the 15-day time limit, and therefore complied with section 38(1) of the *Act*.

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 45 of the *Act* sets out when tenants can end a fixed term tenancy and states:

(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.

(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.

(emphasis added)

There was no issue that the Tenants signed a one-year fixed term tenancy agreement that ended September 1, 2018. There was also no issue that the Tenants gave written notice on May 2, 2018 that they were vacating the rental unit May 31, 2018.

There is no question that the Tenants ended the fixed term tenancy early. The Tenants submitted that they had a right to vacate the rental unit because the house was sold. The Tenants did not point to any section of the *Act* or the tenancy agreement that

permitted them to end the tenancy early on this basis and I do not accept that the Tenants were permitted to end the tenancy early in the circumstances.

The Tenants did not submit that section 45(3) of the *Act* applied in the circumstances nor did they provide any evidence that would allow me to find that section 45(3) of the *Act* did apply. There is no evidence before me that the Tenants provided the Landlords with written notice of a failure by the Landlords to comply with a material term of the tenancy agreement.

In the circumstances, I find the Tenants had no authority to end the tenancy early and find the Tenants breached the *Act* and tenancy agreement by doing so.

I accept the testimony of the Landlord that the rental unit was not re-rented until July 1, 2018 and therefore the Landlords lost rent for June. The Tenants disputed this; however, their belief that the unit was re-rented for June was based on the Landlord not responding to their text messages about whether the Landlords had found someone for the rental unit. I do not find that this calls into question the Landlord's testimony on this point.

There was no dispute that the rent was \$1,200.00 and therefore I accept that the Landlords lost \$1,200.00 in rent for June.

I cannot find that the Landlords minimized their loss given they did not try to re-rent the unit for June. However, I accept the submission of the Landlord that the Landlords felt the purchasers should decide on who the new tenants should be given the purchasers were taking possession of the house July 1, 2018. Further, I do not find it unreasonable that the Landlords did not look for a tenant to stay for the one month between the Tenants vacating and purchasers taking possession of the house. I also do not find it unreasonable that the Landlords did not follow up on the Tenants' contact that was interested in the rental unit. The Tenants provided no information about the person. The Tenants did not mention they had someone interested until May 21, 2018. Further, I accept the submission that the Landlords were entitled to decide whether to accept potential tenants as long as their decision in this regard is reasonable.

The Landlords have only requested \$600.00 in compensation which is the equivalent of half the monthly rent. I find this to be reasonable in the circumstances and I find the Landlords are entitled to compensation in this amount.

The Tenants raised the issue of subletting. I do not find this applicable in the circumstances. The scenario described by the Tenants does not amount to subletting. The Tenants provided no evidence to support their submission that they asked the Landlord if they could sublet the rental unit. The text messages submitted do not mention subletting at all.

Given the Landlords were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to \$700.00. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to keep the security deposit in the amount of \$600.00. The Landlords are entitled to a further Monetary Order in the amount of \$100.00.

### Conclusion

The Application is granted in part. The Landlords are entitled to \$700.00. The Landlords are authorized to keep the security deposit in the amount of \$600.00.

The Landlords are entitled to a Monetary Order in the amount of \$100.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: September 19, 2018

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Residential Tenancy Branch