



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

On June 15, 2018, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The parties attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

Early in the hearing, the parties testified that the Tenant received the Landlords’ evidence package; however, the Tenant did not exchange the letter that she submitted as evidence with the Landlord. As a result, and pursuant to Rule #3 of the *Residential Tenancy Branch - Rules of Procedure*, I excluded the Tenant’s letter from evidence for this hearing. During the hearing and after the Landlord had testified and reviewed her evidence, the Tenant stated that she had not received any of the evidence as referred to by the Landlord. However, the Tenant acknowledged that she had previously seen the evidence as the Landlord had been referring to emails between the two of them. I find that the documentary evidence that was admitted into the hearing did not prejudice any of the parties.

### Issues to be Decided

Should the Landlords receive a Monetary Order for unpaid rent and be able to apply the security deposit to the claim, in accordance with Section 67 of the Act?

Should the Landlords be reimbursed for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Landlord and the Tenant agreed on the following terms of the Tenancy Agreement:

The one-year, fixed term tenancy began on November 1, 2017, between the Landlords, the Tenant and a second tenant (the “second tenant”). The monthly rent of \$1,700.00 was due on the first of each month. Each tenant provided a security deposit of \$385.00 each.

#### Landlord's Evidence:

The Landlord testified that the Tenant provided notice that she wanted to end the tenancy early. The Landlord provided a copy of an email, sent from the Tenant on May 29, 2018, that stated her intention to move on June 1, 2018, and acknowledged that she (the Tenant) may “potentially take the hit of paying double rent for June.” The Tenant stated that the second tenant would be looking for a roommate to replace her.

The Landlord stated that the Tenant did not pay her half of the rent for June 2018 and instead, received the Tenant's consent that the Landlord could keep the security deposit of \$385.00 as partial payment of the rent.

The Landlord testified that she posted an ad on Craigslist on June 2, 2018, renewed the ad five days later so it went to the top of the list and, subsequently, found a new tenant for the rental unit for July 1, 2018.

The Landlord is claiming \$465.00 in lost rent as a result of the Tenant not fully paying for her portion of the rent for June 2018.

#### Tenant's Evidence:

The Tenant testified that she provided consent to the Landlord to use her security deposit towards the June 2018 rent.

The Tenant felt that if she could have found a new roommate (another tenant) to replace her, that she may have been able to reduce the amount of rent that she owed for June 2018. The Tenant stated that she had identified some potential roommates to take over her tenancy; however, the second tenant told her that he wanted to choose

who would be moving into the rental unit and advised her to stop looking. The Tenant felt that if there were more efforts made from the second tenant and the Landlord, that there would have been a new tenant identified before July 1, 2018, therefore, reducing her costs for June 2018 rent.

### Analysis

Section 45(2) of the Act states that a Tenant may end a fixed term tenancy by giving the Landlord a notice to end tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and, is the day before the day in the month that rent is payable under the Tenancy Agreement.

I accept the Landlord's undisputed evidence that on May 29, 2018, the Tenant provided the Landlord written notice to end the fixed term tenancy for June 30, 2018. Although the Tenant seemed to think that she only needed to provide one month's notice to end her tenancy, I find that the Tenant was in breach of Section 45(2) of the Act by attempting to end her tenancy before the end of the fixed term of November 1, 2018, as established by the Tenancy Agreement.

I accept that the Tenant provided the Landlord her security deposit of \$385.00 towards the June 2018 rent and I find that she failed to pay the balance of the June rent in the amount of \$465.00 in accordance with Section 26 of the Act. I find that the Landlord has established a monetary claim against the Tenant.

Before awarding a monetary claim to the Landlord, I must consider Section 7 of the Act that states a Landlord who claims compensation for damage or loss that results from the Tenant's non-compliance with this Act or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss. I accept the undisputed testimony of the Landlord that she, within a few days of the Tenant giving notice to end her tenancy, posted an ad to find a new tenant and subsequently arranged a new tenant for July 1, 2018. I find that the Landlord made reasonable efforts to mitigate her losses and as such, find that the Landlord should be compensated, by the Tenant, for the June 2018 rental arrears, in the amount of \$465.00.

I find that the Landlords' Application has merit and that they should be reimbursed for the filing fee in the amount of \$100.00.

I refer the parties to the below excerpt of the *Residential Tenancy Policy Guideline #13. Rights and Responsibilities of Co-tenants*, as this topic was not fully addressed in the hearing and assisted me in making this Decision in favour of the Landlord:

*Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.*

### Conclusion

The Landlords have established a monetary claim, in the amount of \$565.00, which includes \$465.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. I grant the Landlords a Monetary Order for \$565.00 in accordance with Section 67 of the Act. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: September 19, 2018

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Residential Tenancy Branch