



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for unpaid rent, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for this application.

The Landlord was present for the duration of the teleconference hearing while no one called in for the Tenant during the approximately 15 minutes that the teleconference line remained open. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding package was addressed.

The Landlord provided affirmed testimony that the Notice of Dispute Resolution Proceeding package was sent to the Tenant by registered mail on March 7, 2018 at the forwarding address provided by the Tenant.

The registered mail tracking number was provided by the Landlord and is included on the front page of this decision. The Canada Post website confirms that the package was claimed by the Tenant on March 11, 2018. As such, I find that the Tenant was duly served in accordance with Section 89 of the *Act*.

### Preliminary Matters

At the hearing, the Landlord clarified that the rental unit was a basement suite in her home with a separate entrance. As both the dispute address and the address of the Landlord were noted as the same on the Application for Dispute Resolution, this was

amended to add 'basement' to the address of the rental unit. This amendment was made in accordance with Section 64(3)(c) of the Act.

### Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be allowed to retain the security deposit towards any compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord provided affirmed and undisputed testimony regarding the tenancy. The tenancy began on October 1, 2017. Monthly rent was \$1,100.00 and a security deposit of \$550.00 was paid at the outset of the tenancy. The Landlord confirmed that she is still in possession of the full security deposit amount.

The tenancy agreement was submitted into evidence and confirms the details of the tenancy as stated by the Landlord. The tenancy agreement was for a fixed term of six months, set to end on April 1, 2018. The Landlord testified that on January 12, 2018, she signed a Mutual Agreement to End the Tenancy with the Tenant. The Mutual Agreement was submitted into evidence and stated that the tenancy would end on April 1, 2018. The Mutual Agreement was signed by the Landlord and Tenant.

The Landlord provided testimony that on February 23, 2018, the Tenant sent a text message advising that he was moving out on February 28, 2018. However, on March 1, 2018, the Tenant sent another text stating that he was moving out that same day. The text message exchange was submitted into evidence. The Landlord stated that the keys to the rental unit were returned to her on March 3, 2018.

The Landlord has claimed \$1,100.00 for rent for March 2018, which was not paid by the Tenant. A family member of the Landlord had plans to move into the rental unit on April 1, 2018, so the Landlord was unable to seek a new tenant for the month of March 2018. The Landlord also noted that it took some time in March 2018 to paint the rental unit and complete some repairs.

The Landlord confirmed receipt of the Tenant's forwarding address by text message on March 1, 2018. The Landlord would like to retain the security deposit towards the amount owing.

### Analysis

I refer to Section 45(2) of the *Act* which states the following regarding ending a fixed term tenancy:

- (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.

As such, I find that the Tenant's notice to end the tenancy prior to the end of the fixed term was not in compliance with the *Act*. I also note that the parties signed a Mutual Agreement to End the Tenancy, in accordance with Section 44(1)(c) of the *Act*. As both parties agreed that the tenancy would end on April 1, 2018, instead of continuing on a month-to-month basis when the initial fixed term tenancy ended.

As such, I determine that the Landlord experienced a loss of rental income when the Tenant vacated the rental unit early and did not pay rent for March 2018. I also note that in accordance with Section 7(2) of the *Act*, the party claiming a loss must do what is reasonable to mitigate their losses.

However, I accept the testimony of the Landlord that a family member had plans to move in on April 1, 2018 and therefore it would not be reasonable for the Landlord to seek a tenant for such a short period of time. I also find that the short notice provided by the Tenant that he would be moving out early, did not allow the Landlord time to look at other possible options for minimizing her potential loss. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$1,100.00, pursuant to Section 67 of the *Act*.

Pursuant to Section 72(2) of the *Act*, the Landlord may retain the security deposit in the amount of \$550.00 towards the total amount owing. As the Landlord's Application was successful, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

The Landlord is awarded a Monetary Order in the amount outlined below:

March 2018 rent	\$1,100.00
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$550.00)</i>
<b>Total owing to Landlord</b>	<b>\$650.00</b>

### /Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$650.00** for rent owed for March 2018 and for the recovery of the filing fee paid for this Application. 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: October 02, 2018

---

Residential Tenancy Branch