



# 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 scheduled to convene at 1:30 p.m. on November 1, 2018 by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

One of the landlords attended the hearing and gave affirmed testimony, and also represented the other landlord. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call.

The landlord testified that each of the 2 tenants was served individually with the Landlord's Application for Dispute Resolution and notice of this hearing (the Hearing Package) by registered mail on July 18, 2018 and was permitted to provide proof of such service after the hearing had concluded. I have now received copies of 2 Registered Domestic Customer Receipts addressed to each of the tenants dated July 18, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this fixed term tenancy began on January 1, 2018 and was to expire on December 31, 2018 thereafter reverting to a month-to-month tenancy. However, the tenants notified the landlords by text message on June 26, 2018 that they had already vacated the rental unit.

Rent in the amount of \$1,000.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears to the end of June, 2018. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$500.00 which is still held in trust by the landlords, and no pet damage deposit was collected.

A copy of the tenancy agreement has been provided for this hearing which contains an Addendum with 4 terms, one of which states: "In the event that the tenant chooses to move out before the end of the Tenancy Agreement, a minimum of 2 MONTHS notice must be given. This allows adequate time to find a suitable tenant without the risk of lost monthly income."

The rental unit was not re-rented, but sold, and the purchaser took possession on August 16, 2018.

Since the tenants have not given 2 months notice to vacate, the landlords claim 2 months rent from the tenants, in addition to recovery of the \$100.00 filing fee, and an order permitting the landlords to keep the \$500.00 security deposit.

### Analysis

The *Residential Tenancy Act* specifies how a tenancy ends. A tenant may give a month's notice to end a month-to-month or a fixed term tenancy, however in the case of a fixed term, the effective date of the tenant's notice cannot be earlier than the end of that fixed term. The tenants in this case did not comply, and therefore, I find that the landlords have established a claim for one month's rent for July, 2018, or \$1,000.00.

Where a landlord seeks loss of rental revenue, the landlord must be able to prove that the landlord mitigated any loss by re-renting as soon as practicable. In this case, the landlords have not established that any loss of rental revenue was mitigated by advertising, but sold the rental unit in mid-August, and therefore, are not entitled to loss of rental revenue.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$500.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords as against the tenants for the difference in the amount of \$600.00.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$500.00 security deposit, and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$600.00.

This order is final and binding and may be enforced.

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: November 05, 2018

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Residential Tenancy Branch