



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (Application) pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application for Dispute Resolution (Application) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant is duly served with the Application and evidence.

The tenant testified that they sent their evidence to the landlord on October 10, 2018, by registered mail. The landlord confirmed that they received it. In accordance with section 88 of the *Act*, I find that the landlord is duly served with the tenant's evidence.

### Preliminary Matter

At the outset of the hearing the landlord requested to amend the applicant's name to reflect company that the landlord represents, as reflected on the tenancy agreement submitted. I allowed this amendment pursuant to section 64 of the *Act*.

Issue(s) to be Decided

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on December 01, 2017, with a monthly rent of \$1,630.00, due on the first day of each month with a security deposit in the amount of \$815.00 that the landlord currently retains.

The landlord also provided in written evidence:

- A copy of a notice to end tenancy from the tenant dated March 16, 2018, with an effective vacancy date of March 31, 2018;
- A copy of a Condition Inspection Report signed by an agent of the landlord and the tenant on March 21, 2018, which authorizes the landlord to retain the security deposit in the amount of \$500.00 for breaking the lease and \$315.00 for cleaning of blinds, carpets and the rest of the rental unit;
- A copy of a Lease Break and Late Notice to the tenant indicating that the tenant is still responsible for April 2018 rent due to providing notice to end the tenancy after February 28, 2018; and
- A copy of a Monetary Order Worksheet showing the landlord's claim for the security deposit which also includes \$1,630.00 for April 2018 unpaid rent.

In addition to some of the evidence noted above, the tenant also provided:

- A timeline of events that occurred from the tenant signing the tenancy agreement with the previous agent for a student who was going to occupy the rental unit and that the occupant was supposed to take over the lease from the tenant;
- A copy of a cheque showing that the occupant paid for the rent on March 01, 2018; and
- Copies of various e-mails exchanged between the occupant of the rental unit, the tenant and the previous agent of the landlord regarding the occupant ending the tenancy early due to the occupant's mother's health problems. The landlord indicates that the tenant is responsible for the unpaid rent, which the tenant

disputes as they did not occupy the rental unit. The occupant and the occupant's father appeals to the previous agent to rent out the rental unit as soon as possible so that there is no loss of rent for April 2018.

The landlord testified that the tenant signed a tenancy agreement and gave late notice to end the tenancy. The landlord submitted that the tenant signed the condition inspection report to authorize the landlord to retain the security deposit for liquidated damages and cleaning of the rental unit. The landlord indicated that they are seeking the unpaid rent for April 2018. The landlord stated that the tenant is responsible as they signed the tenancy agreement, regardless of whether the tenant occupied the rental unit or not.

The tenant confirmed that they signed the tenancy agreement, paid the first month's rent as well as the security deposit, gave written notice to end the tenancy and signed the Condition Inspection Report at the end of the tenancy but that the student who actually occupied the rental unit was supposed to assume responsibility for the lease as of December 2017 when the occupant moved into the rental unit. The tenant stated that a previous agent for the landlord stated that they would have the occupant sign a new agreement but that this did not happen.

The tenant confirmed that they signed the condition inspection report to authorize the landlord to retain the tenant's security deposit.

### Analysis

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that it is undisputed that the tenant has signed the tenancy agreement and that there is no evidence or testimony provided which demonstrates that the occupant assumed legal responsibility for the tenancy in writing.

Although the tenant holds the previous agent responsible for not having the occupant sign a new lease, I find that it was the tenant's responsibility as the lease holder to assign the lease to the occupant and to have obtained permission for this assignment in writing from the landlord, pursuant to section 34 of the Act, before signing the tenancy agreement. I find that the tenant is legally responsible for this tenancy regardless of occupancy, pursuant to section 16 of the Act.

Section 38 of the *Act* establishes that a landlord, upon receiving the tenant's forwarding address, must either repay the security deposit to the tenant or make an application for dispute resolution within 15 days if they do not have written authorization to retain the security deposit.

I find that is undisputed that the tenant gave written authorization for the landlord to retain the security deposit in the amount of \$815.00 for cleaning different items and for liquidated damages. For this reason I find that the matter of the security deposit is conclusively resolved as the landlord has legal authorization from the tenant to retain it pursuant to section 38 of the *Act*.

Section 45 of the *Act* establishes that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

I find that it is undisputed that the tenant gave written notice to end this tenancy on March 16, 2018, with an effective date of March 31, 2018. I find that this notice from the tenant is not in accordance with the *Act* as the effective date of a notice to end tenancy given in March 2018, for rent due on the first day of each month, is April 30, 2018, pursuant to section 45. For the above reason, I find that the tenant is obligated to pay the monthly rent for April 2018 in the amount of \$1,630.00.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In consideration of the above, I find that the landlord is entitled to a monetary award in the amount of \$1,630.00 for unpaid rent owing for April 2018.

As the landlord was successful in their application, they may recover the filing fee related to this application.

### Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour in the amount of \$1,730.00, which allows the landlord to recover unpaid rent and to recover the filing fee for this Application.

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: November 05, 2018

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Residential Tenancy Branch