



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNRL, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on August 16, 2018. The Landlord applied for a monetary order for damages or compensation under the *Act* and to recover the filing fee paid for the application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, 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.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damages or compensation under the *Act*?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

The parties agreed that the tenancy began on March 1, 2017. Rent in the amount of \$2,750.00 was payable on the first day of each month, and the Tenant paid a security deposit of \$1,375.00 at the outset of this tenancy.

The Tenant testified that she gave notice to end her tenancy to the Landlord on June 16, 2018, with an effective date of the end of July 2018. The Tenant testified that she had decided to end her tenancy due to the Landlord allowing another renter on the property to smoke in their rental unit. The Tenant testified that the Landlord did not have a mailbox and that she had left the

notice in the same location as the Landlord's other mail deliveries, that had been piling up due to the Landlord being out of town. The Tenant submitted a copy of her notice to end her tenancy into documentary evidence.

The Landlord testified that she had been out of town during the time in which the Tenant testified that she had served her notice. The Landlord confirmed that she did not have a mailbox, but that all of her mail was left for her in a central location and that her tenants could serve her document by leaving them in that location. The Landlord testified that she collected all of her mail from that location when she returned. The Landlord testified that she never received the Tenant's notice to end the tenancy.

Both the Landlord and the Tenant testified that the Landlord had served the Tenant with a 10-Day Notice to End Tenancy Due to Unpaid Rent or Utilities on July 12, 2018. The parties also agreed that there had been a previous Ex Parte Proceeding regarding that notice, in which the Landlord was given an Order of possession and a Monetary Order. The hearing file number has been recorded on the style of cause page for this decision.

The Landlord testified that she had served the Order of Possession on the Tenant and that the Tenant had moved out in accordance with that Order. The Landlord testified that she started looking for a new renter to take over the rental unit as soon as the Tenant vacated the unit. The Landlord testified that she posted a sign in front of the rental unit and posted an online add-on July 26, 2018, the day after the Tenant moved out. The Landlord testified that she found a new renter and that they moved in as of September 10, 2018. The Landlord is seeking to recover her lost rental income for August 2018.

The Tenant testified that she had moved out in accordance with her notice and that the Order of Possession had not affected her plans as she had already planned on being out of the rental unit for the end of July. The Tenant testified that she should not have to pay the Landlord the loss of rental income for August 2018 as she had given the Landlord six weeks notice to end her tenancy, and that given the rental market in the city in which the rental unit is located the Landlord should have been able to easily find a new renter to taken over her tenancy for August 1, 2018, had she tried.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a one-year fixed term tenancy, beginning on March 1, 2017, in accordance with the *Act*.

I accept the testimony and the documentary evidence submitted by the Tenant, and I find that the Tenant served the Landlord with written notice to end her tenancy early on June 16, 2018. I find that the Tenant's notice was deemed to have been received by the Landlord on June 19, 2018, three days after service, pursuant to section 90 of the *Act*.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

**Tenant's notice**

**45(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.

I find that the tenancy could not have ended in accordance with the *Act* until February 28, 2018. I find that the Tenants failed to comply with the *Act* when she issued notice to the Landlord to end the tenancy as of July 31, 2018.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

In this case, I find that the Tenant's breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord and that the Landlord has provided sufficient evidence to prove the value of that loss. However, I find that the Landlord did not act reasonably to minimize her damages or losses due to the Tenant's breach, when she did not attempt to try and re-rent the rental unit for August 2018 until the Tenant had moved out.

I understand that the Landlord had been out of town when the Tenant gave her notice to end their tenancy. However, the fact that the Landlord was not in town when the Tenant decided to end their tenancy early does not negate the Landlord's responsibility to mitigate their losses by taking the appropriate steps to attempt to re-rent the unit as soon as possible. I find that the Landlord knew that the Tenant was ending her tenancy for five weeks before she initiated attempts to re-rent the rental unit.

I find that the Landlord was in breach of section 7(2) of the *Act* when she did not take steps to rent the rental unit after being notified that the Tenant had decided to end the tenancy early. Therefore, I dismiss the Landlord's claim for the recovery of the loss of rental income for the month of August 2018.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in her application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for her application.

### Conclusion

The Landlord's application is dismissed, without leave to reapply.

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 15, 2018

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Residential Tenancy Branch