



# 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 an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- A monetary order for unpaid rent or utilities; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by Landlord and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised concerns about the service or receipt of the Application or Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision will be emailed to them at the email address provided in the hearing. At the request of the Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the hearing as well as mailed to them at the mailing address provided by them in the hearing.

### Preliminary Matters

#### **Preliminary Matter #1**

The Tenant stated that no documentary evidence was served on the Landlord or the Residential Tenancy Branch (the “Branch”) by them but confirmed receipt of the Landlord’s documentary evidence on September 18, 2018, which was sent by registered mail on September 14, 2018. The Landlord also provided me with the

registered mail tracking number and the mail service provider's website confirms that the registered mail was sent and received as described above.

As a result, I find that the Tenant was served with the Landlord's documentary evidence on September 18, 2018, the date it was received by registered mail and I therefore accept this documentary evidence for consideration.

### **Preliminary Matter #2**

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent or utilities?

Is the Landlord entitled to recovery of the filing fee?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the four month fixed term tenancy, which commenced on May 1, 2018, was set to end on August 31, 2018, and that rent in the amount of \$1,150.00 was due on the first day of each month. In the hearing the parties confirmed that these are the correct terms of the tenancy agreement. The tenancy agreement also states that a \$575.00 security deposits was paid, which the Landlord still holds.

The parties were in agreement that although an e-mail money transfer was sent to the Landlord for June rent on June 1, 2018, in the amount of \$1,150.00, that this e-mail money transfer was subsequently cancelled by the Tenant on June 28, 2018, before the Landlord had deposited it. As a result, the parties agreed that rent was not paid for June of 2018. The Parties also agreed that no rent was paid to the Landlord thereafter and disputed the amount of rent owed between July 1, 2018 – August 31, 2018.

The Tenant stated that he attempted numerous times to reach the Landlord without success in June and when he could not reach the Landlord and the Landlord had not yet accepted the e-mail money transfer, he cancelled it. The Tenant stated that after

cancelling the e-mail money transfer he still could not reach the Landlord and this made him very uncomfortable. As a result, the Tenant stated that he no longer felt comfortable continuing the tenancy and vacated the rental unit on July 15, 2018. The Tenant acknowledged that he did not give the Landlord notice that he was ending the tenancy, in writing or otherwise, and returned the keys to the building manager on August 31, 2018, as this was the last day of the fixed term tenancy. The Tenant argued that as he vacated the rental unit on July 15, 2018, he should only owe the Landlord \$1,725.00; \$1,150.00 for June and \$575.00 for half of July's rent.

The Landlord agreed that keys to the rental unit were returned by the Tenant on August 31, 2018, and stated that prior to this, he was unaware that the Tenant had vacated the rental unit. The Landlord stated that he was out of the country for some time and as a result, did not immediately accept the e-mail money transfer for June rent, but that the Tenant had no right to cancel it as rent was owed. Further to this, the Landlord stated that this cancellation prevented him from being able to accept the rent. The Landlord stated that the tenancy agreement was for a fixed term until August 31, 2018, and that the Tenant neither gave notice to end the tenancy early nor sought the Landlord's approval to end the tenancy. As a result, the Landlord stated that the Tenant owes \$3,450.00 in rent for June, July, and August of 2018. Further to this, the Landlord stated that his absence from the country in no way impacts the Tenants obligation to pay rent on time and in full or the length of the fixed-term, especially since a building manager was available to the Tenant for any issues during his absence.

### Analysis

Section 26 (1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

As no evidence was presented by either party that the Tenant had a right under the *Act* to deduct all or part of the rent that was due under the tenancy agreement, I find that the Tenant was obligated to pay the monthly rent of \$1,150.00, on time and in full each month pursuant to the tenancy agreement and section 26 (1) of the *Act*.

Although the Tenant stated that he should not be responsible for the rent owed under the tenancy agreement after July 15, 2018, the date he moved out of the rental unit, I do not agree. Section 45 (2) of the *Act* states that a tenant may end a fixed term 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, 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, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As a result, I find that the earliest date upon which the Tenant could have ended the fixed term tenancy under section 45 of the *Act*, was August 31, 2018, and that to do so, would have required the Tenant to provide the Landlord with written notice on or before July 31, 2018. In any event, both parties agreed that the Tenant never gave the Landlord notice that he was ending the tenancy early, either in writing or in any other manner, and simply returned the keys of the rental unit on August 31, 2018.

Section 44 (1) (d) of the *Act* states that a tenancy ends if the tenant vacates or abandons the rental unit and although the Tenant stated that he vacated the rental unit on July 15, 2018, he provided no documentary or other evidence in support of this testimony. There is also no evidence that the Tenant advised the Landlord that he had vacated the rental unit or that the Landlord was in any way aware that the Tenant had vacated the rental unit until he returned the keys on August 31, 2018. Section 44 of the *Act* also states that the tenancy may end in a variety of other ways, such as agreement in writing by the parties, frustration, an order by the director of the Branch, and enforcement of a move-out clause as prescribed in section 97 (2) (a.1) of the *Act*; however, no evidence was presented by either party that any of the above noted grounds for ending the tenancy apply. As a result of the above, I do not find that the tenancy ended on July 15, 2018, pursuant to section 44 (1) (d) of the *Act*.

As there is no evidence before me that any of the other grounds listed under section 44 of the *Act* apply, and I have already found above that the Tenant was not entitled to end the fixed-term tenancy pursuant to section 45 of the *Act* prior to August 31, 2018, I therefore find that the Tenant was responsible for \$1,150.00 in rent each month of the tenancy agreement up to and including August of 2018.

Based on the above, and the Tenant's acknowledgement that no rent has been paid to the Landlord for June, July or August of 2018, I am satisfied on a balance of probabilities, that the Tenant did not pay \$3,450.00 in rent as required by the tenancy agreement and section 26 (1) of the *Act*. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. As I have already found above that the Tenant breached section 26 of the *Act* when they failed to pay \$3,450.00 in rent as required, I therefore grant the Landlord's

Application seeking recovery of the \$3,450.00 in outstanding rent pursuant to section 7 of the *Act*.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72 (1) of the *Act*. Although the Landlord still holds the security deposit, the parties wished to deal with the security deposit separately under the *Act*. As a result, I have not authorized the Landlord to retain any portion of the security deposit towards the outstanding rent listed above pursuant to section 72 (2) of the *Act*. The Landlord is therefore entitled to a Monetary Order in the amount of \$3,550.00; \$3450.00 in outstanding rent, plus \$100.00 for the recovery of the filing fee.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,550.00. 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: January 8, 2019

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Residential Tenancy Branch