



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S FFL  
                             MNSD FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; an order permitting the landlord 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.

The landlord and one of the tenants attended the hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions.

At the commencement of the hearing, the parties agreed that the tenants' application for a monetary order for double the amount of the security deposit and recovery of the filing fee which is currently scheduled for 1:30 p.m. on March 12, 2019 be heard jointly with this application today, and the March 12, 2019 hearing be cancelled. I hereby so order, by consent, and the frontal page of this Decision reflects a joint application.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Have the tenants established a monetary claim as against the landlord for all or part or double the amount of the security deposit?

### Background and Evidence

**The landlord** testified that this tenancy began on September 1, 2016 for a fixed term expiring on August 31, 2017, and the parties entered into a new fixed term agreement beginning on September 1, 2017 and expiring on August 31, 2018. The landlord believes the tenants vacated the rental unit on August 31, 2018.

Rent in the amount of \$1,750.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears to the end of August, 2018. At the outset of the first tenancy the landlord collected a security deposit from the tenants in the amount of \$825.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the later tenancy agreement has been provided as evidence for this hearing.

The rental unit is a townhouse, and the landlord does not reside in the complex.

The tenant gave notice to vacate the rental unit by email on August 13, 2018 effective August 31, 2018, however the law changed and the landlord was advised by the Residential Tenancy Branch that the tenancy did not end by virtue of the expiration of the fixed term and automatically reverted to a month-to-month tenancy.

The landlord retained the services of a property manager to re-rent, but the rental unit was not re-rented until October 1, 2018. The landlord believes the property manager advertised the rental unit for \$2,100.00 per month. The landlord referred to the Residential Tenancy Branch website and also contacted the Residential Tenancy Branch and was told that since the law changed, the fixed term automatically became a month-to-month tenancy and the tenant was required to give a full month's notice to end the tenancy. The landlord emailed the tenant with a portion of what he read on the website.

The landlord also testified that the property manager was retained only for finding a tenant, signing the contract and doing the move-in condition inspection reports. The landlord is not aware of when or how the property manager advertised, but believes the same property manager completed the move-out condition inspection in this case, and a copy of the report has been provided for this hearing which is dated August 31, 2018 and contains the tenants' forwarding address.

The landlord claims one month of rent, or \$1,750.00 for the tenants' failure to give a full month's notice for September, 2018, and recovery of the \$100.00 filing fee. The landlord seeks to keep the security deposit of \$825.00 in partial satisfaction.

**The tenant** testified that at the end of the first fixed term, the landlord gave the tenants 2 options: enter into a 6 month fixed term, or pay an additional \$100.00 per month for a 12 month term. The tenants chose the 12 month term for the higher rental amount and the new tenancy agreement was signed on June 18, 2017.

On June 1, 2018 the tenant secured employment in a different community. On July 16, 2018 the landlord sent the tenants an email, a copy of which has been provided for this hearing, saying that the lease was coming to an end and wanting the tenants' thoughts about renewal. It also stated that the landlord's son may be interested in renting. On July 19, 2018 the tenant telephoned the landlord, who advised that his son was no longer interested in renting but his daughter might be. The tenant advised the landlord that the tenants would not be renewing the tenancy agreement because the tenant had secured employment in a different community, and that his wife also left her job.

On August 13, 2018 the landlord emailed the tenant requesting written confirmation about ending the tenancy, and believing that the landlord needed it for his own records, the tenant replied that the tenants would be vacating on August 31, 2018. However, the law changed and from December 11, 2017 moving forward, any tenancy agreements written prior to that are "grandfathered." The new legislation is to prevent landlords from increasing rent arbitrarily by enforcing the end of a fixed term unless the tenant agrees to an increase which is what happened after the end of the first fixed term in this case.

The move-out condition inspection was completed with the landlord's property manager on August 31, 2018 and the tenant gave a forwarding address on that report that day.

The tenant further testified that the landlord's property manager advised the tenant that the rental unit was advertised for rent at \$2,100.00 per month.

### Analysis

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;

3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord claims one month's rent for the tenants' failure to give a full month's notice to vacate the rental unit, and that despite the expiration of the fixed term, the legislation change requires the tenants to do so because the tenancy becomes a month-to-month tenancy.

I refer to Residential Tenancy Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent, which states, in part: "In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale."

In this case, the advertisement was for \$350.00 per month over the amount that the tenants had been paying, and I find that had the landlord advertised for the same amount that the tenants had been paying, the landlord may very well have been able to re-rent for September 1, 2018, and by not doing so, the landlord has not mitigated any loss of rental revenue. I therefore dismiss the landlord's claim.

With respect to the tenants' application, a landlord is required to return to a tenant the full amount of the security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant.

In this case it is clear that the landlord received the tenants' forwarding address in writing on August 31, 2018, and the tenancy ended on August 31, 2018. The landlord filed the application for dispute resolution on September 15, 2018, which I find is the latest date that the landlord could have made the application. Therefore, the tenants are not entitled to double the amount.

Having dismissed the landlord's application, I find that the tenants are entitled to recovery of the \$825.00 security deposit. Since the tenants have been successful, the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$925.00.

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: January 17, 2019

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Residential Tenancy Branch