



# 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 convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 13, 2018 (the “Application”). The Landlord sought to recover unpaid rent, to keep the security and pet deposits and for reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord had submitted evidence in relation to service; however, I could not open the files submitted. I allowed the Agent to re-send these documents and have received them.

The Agent testified that the hearing package and evidence were sent by registered mail to the Tenant’s forwarding address which was provided in a text message. A copy of this text was submitted in evidence.

The registered mail receipts show the package was sent November 16, 2018 to the Tenant at the forwarding address. The receipts include Tracking Number 1 as noted on the front page of this decision. I looked this up on the Canada Post website which shows the package was delivered and signed for November 23, 2018. The signatory name shows the initials noted on the front page of this decision.

Based on the undisputed testimony of the Agent, evidence submitted and Canada Post website information, I am satisfied the package was sent to the Tenant's forwarding address by registered mail on November 16, 2018. I find the Tenant has been served with the package in accordance with sections 59(3), 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act").

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security and pet deposits?
3. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord sought compensation as follows:

1. \$600.00 October rent; and
2. \$1,200.00 November rent.

The Landlord originally sought \$45.00 for an NSF fee; however, the Agent withdrew this request at the hearing.

A written tenancy agreement was submitted as evidence. It is between a company on behalf of the Landlord and the Tenant in relation to the rental unit. The tenancy started March 01, 2018 and was for a fixed term ending August 31, 2018. The tenancy then became a month-to-month tenancy. The rent was \$1,200.00 per month due on the first day of each month. The Tenant paid a \$600.00 security deposit and \$600.00 pet deposit. The agreement is signed on behalf of the Landlord and by the Tenant.

The Agent testified as follows.

The tenancy ended October 31, 2018.

The Tenant provided his forwarding address by text on November 05, 2018. A copy of this was submitted.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet deposits.

She is not sure whether a move-in inspection was done but usually one is. This is not a situation where the Tenant was provided two opportunities to do an inspection but refused to participate.

Her and the Tenant did a move-out inspection.

The Tenant resided in the rental unit for all of October. He vacated October 31, 2018. The Tenant failed to pay half of the monthly rent. The Tenant lived at the rental unit with his mother. His mother's half of the rent came from social assistance and the Landlord received this for October. The Landlord did not receive the remaining \$600.00. The Tenant had no authority to withhold rent under the *Act*.

The Landlord is seeking loss of rent for November. The Tenant called her October 30<sup>th</sup> to ask about a move-out report. She said she did not know the tenants were moving. She told the tenants she did not get proper notice of this. The only notice the Landlord received about the tenants vacating was the verbal notice on October 30<sup>th</sup>.

The Landlord tried to find a renter for November but did not. The unit was re-rented for December 1<sup>st</sup>. The unit was re-listed immediately on the Agent's website and other websites. It was listed for less rent and rented for less rent.

The Landlord submitted a rent ledger showing \$1,845.00 is outstanding.

The Agent pointed to a letter dated October 26, 2018 issued to the Tenant in relation to his dog to support that she was not aware the tenants were vacating at the end of October. She advised that she would not have issued this letter if she was aware the tenants were vacating.

### Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Section 26(1) of the *Act* states:

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security and pet deposit at the end of a tenancy.

Based on the undisputed testimony of the Agent, I find the Tenant did not extinguish his rights in relation to the security or pet deposit under section 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished his right to the security or pet deposit under section 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit.

The Agent testified that the tenancy ended October 31, 2018. The Agent received the Tenant's forwarding address November 05, 2018. I find the text sufficient to trigger section 38 of the *Act* given the Agent received it.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from November 05, 2018 to repay the security and pet deposits or file an application for dispute resolution claiming against the deposits. The Application was filed November 13, 2018, within the time limit.

Policy Guideline 31 addresses pet damage deposits and states:

**What does the deposit cover?**

The deposit is to be held by the landlord as security for damage caused by a pet.

**When can a landlord keep the deposit?**

Pet damage deposits are generally treated the same as security deposits.

At the end of a tenancy, if the tenant agrees in writing, the landlord may keep all or part of the pet damage deposit.

At the end of a tenancy, the landlord may keep all or a part of the pet damage deposit to pay an amount previously awarded by an arbitrator for damage caused by a pet and which was still unpaid at the end of the tenancy.

The landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing.

[emphasis added]

The Landlord kept the pet damage deposit and applied for unpaid rent and loss of rent. Pursuant to Policy Guideline 31, the Landlord was not permitted to do so as the Landlord was only allowed to claim against the pet damage deposit for damage caused by a pet. The Landlord was required to repay the pet damage deposit within 15 days of receiving the Tenant's forwarding address. Given the Landlord did not do so, the Landlord has failed to comply with section 38(1) of the *Act*.

Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the pet damage deposit and must return double the deposit to the Tenant. I find the Landlord must return \$1,200.00 to the Tenant in relation to the pet damage deposit. I note that there is no interest owed on this as the rate has been 0% since 2009.

The Landlord is still entitled to claim for unpaid rent and loss of rent and I consider that now.

Based on the undisputed testimony of the Agent, and evidence submitted, I accept the following. The Tenant resided in the rental unit for all of October. The Tenant was required to pay \$1,200.00 in rent for October by October 1<sup>st</sup>. The Tenant failed to pay \$600.00 of the October rent. The Tenant had no authority under the *Act* to withhold rent.

I am satisfied the Landlord is entitled to \$600.00 for unpaid rent for October.

Based on the undisputed testimony of the Agent, and evidence submitted, I accept the following. The Tenant advised the Agent verbally on October 30<sup>th</sup> that the tenants were vacating October 31<sup>st</sup>. This is the first notice the Landlord received in relation to this. The tenants vacated October 31<sup>st</sup>.

This was a month-to-month tenancy at the relevant time. Pursuant to section 45(1) of the *Act*, the Tenant was required to give notice that:

(a) is not earlier than one month after the date the landlord receives the notice,  
and

(b) 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.

Under section 53 of the *Act*, the effective date of the notice automatically changes as follows:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The earliest the Tenant could have ended this tenancy was November 30, 2018. The Tenant is obligated to pay rent up to this date.

I am satisfied the Tenant breached the *Act* by not complying with section 45 in relation to notice to end the tenancy. I accept the undisputed testimony of the Agent that the unit was not re-rented until December 1<sup>st</sup> and therefore accept the Landlord lost one month's rent because of this non-compliance. I accept the undisputed testimony of the Agent in relation to re-listing the rental unit and find the Landlord mitigated his loss.

I am satisfied the Landlord is entitled to \$1,200.00 in compensation for loss of rent for November.

In summary, the Landlord must return \$1,200.00 to the Tenant. However, the Tenant owes the Landlord \$1,800.00 for unpaid rent for October and loss of rent for November. Therefore, the Landlord can keep the \$600.00 security deposit and \$600.00 pet damage deposit pursuant to section 72(2) of the *Act*. The Tenant does not owe the Landlord any further monies in this regard as the security deposit and pet damage deposit are the equivalent of \$1,800.00 given the pet damage deposit was doubled.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Landlord is issued a monetary order in this amount.

### Conclusion

The Landlord must return \$1,200.00 to the Tenant. However, the Tenant owes the Landlord \$1,800.00 for unpaid rent for October and loss of rent for November.

Therefore, the Landlord can keep the \$600.00 security deposit and \$600.00 pet damage deposit. The Tenant does not owe the Landlord any further monies in this regard as the security deposit and pet damage deposit are the equivalent of \$1,800.00 given the pet damage deposit was doubled.

I award the Landlord reimbursement for the \$100.00 filing fee. The Landlord is issued a monetary order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: March 28, 2019

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Residential Tenancy Branch