



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the cost of the filing fee. The Landlord said he held the Tenant's security deposit in order to recover the unpaid portion of the January 2019 rent.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. They both said they received and had time to consider the other's Application and/or documentary evidence.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order pursuant to section 67, and if so, in what amount?

- Is the Landlord entitled to recovery of the cost of the filing fee, pursuant to section 72?

### Background and Evidence

In the hearing, the Parties agreed that the tenancy began on April 1, 2017, with rent being \$1,400.00 due on the first day of the month. The Parties agreed that the Tenant paid a security deposit of \$700.00 and no pet damage deposit. The Parties agreed that there was no written tenancy agreement at the start of the tenancy.

The Landlord submitted a tenancy agreement dated March 10, 2018, for a term starting at noon on April 1, 2018 and ending at noon on April 1, 2019; however, the Tenant did not sign this tenancy agreement.

In the hearing, the Landlord said: "We had conversations leading up to the end of the year [2018] about her leaving the apartment." He agreed that their intention at that point was to not renew the lease beyond its expiry date of April 1, 2019.

The Landlord said: "The first time there was any indication that her leaving was imminent was in a text I received from her on December 5, 2018. She said she's actively looking for a new place and aiming to move out on the 15<sup>th</sup> [of January] or on February 1." He said even though it was a few days into December by that point, "we could call it December 1 notice, making February 1 the move out date."

The Tenant said in the hearing that she did not have a lease with this man and that it was a month-to-month tenancy. She said on November 10, 2019, given the Landlord's repeated complaints about noise from her unit, she was tired of walking on egg shells, and she decided she had to move out.

The Tenant submitted a copy of a notarized document that states:

To [D.B.],

November 17, 2018

I [L.B.] am giving my notice to leave [rental unit address] on January 15, 2019. As per our verbal conversation early November where we mutually agreed that the tenancy was no longer working for either parties.

[Tenant's signature]  
[Tenant's printed name]

[Notary's signature]

November 17, 2018

Notary's stamp

The Tenant said that she put this in the Landlord's mail box at 4 p.m. on Saturday, November 17, 2018. She said she never heard anything further from the Landlord about this notice.

The Parties agreed that they texted each other about the end of the tenancy in early December 2018. They referred to the following text exchange, which was submitted by the Landlord:

[Tenant:]      Hey there  
                     in the best interest of  
                     both parties, I am actively  
                     looking for a new place.

[Landlord:]              OK, are you still aiming  
                                 for April 1<sup>st</sup>, or sooner?

[Tenant:]      As soon as I can find one  
                     that accepts [her dog]. The  
                     Other nite [her son] took her  
                     to pee and was  
                     approached by a  
                     junkie. sooner the better

[Landlord:]              I'm sorry to hear that. It's  
                                 close enough to the start  
                                 of the month – should we  
                                 call this your 2 months  
                                 notice?

[Tenant:]                      Jan 15<sup>th</sup> or Feb 1<sup>st</sup>  
                                 Finding a place with dog, I have to  
                                 take.  
                                 When my kids are loud n the barks  
                                 I know it irritates you, hence my  
                                 decision to go on Jan 15  
                                 I will make the place available for  
                                 showing.

[Landlord:]                      Hi [Tenant]. I just got an e-transfer for \$700. Can you let me know what's going on?

The Tenant said her texts refer back to the notice that she left in the Landlord's mail box in November. She said she referred back to her kids being loud and the dog barking, "hence my decision to go on Jan 15. I was making reference back to my written notice."

The Parties agreed that the Tenant paid the Landlord \$700.00 of the \$1,400.00 owing for January 2019 rent. The Tenant said she had a house-sitting opportunity elsewhere starting mid-month.

The Tenant said that she gave the Landlord her forwarding address on January 25, 2019, but the Landlord provided a copy of an email he received from the Tenant on January 17, 2019, in which she provided her forwarding address. The Parties agreed that the Landlord has not yet returned the Tenant's security deposit to her.

### Analysis

In the hearing, the Landlord characterised this as a fixed term tenancy agreement; however, the agreement was not signed by the Tenant. Based on the Parties' testimony in the hearing and their documentary evidence, I find that they had an oral tenancy agreement on a month-to-month basis.

Section 45 of the *Act* sets out the mechanism by which tenants can end tenancies.

#### **Tenant's notice**

**45** (1) A tenant may end a periodic 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, 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.

. . .

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Contrary to the Landlord's evidence that he expected the Tenant to give him two months' notice to end the tenancy, I find that section 45 of the *Act* requires a tenant to give one month's notice in this set of circumstances.

The Tenant said that her comments in the December 5, 2018 texting exchange refers back to the written notice she said she gave in November. However, I find that the Landlord's comments, such as "are you still aiming for April 1<sup>st</sup>, or sooner?" are more indicative that the Landlord did not receive the written notice in November 2018. Based on all the evidence before me, overall, and on a balance of probabilities, I find that the Tenant did not provide sufficient evidence to establish that she gave the Landlord notice to end the tenancy prior to December 5, 2018.

Section 52 of the *Act* describes the requirements of a notice to end tenancy:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) when given by a landlord, be in the approved form.

A tenant cannot give notice to end a tenancy via text messaging. Section 45 (4) of the *Act* says that a notice to end a tenancy by a tenant must comply with section 52 of the *Act*. I have found that the Tenant did not give the Landlord any notice of the end of the tenancy until the text dated December 5, 2018. This did not comply with section 52 of the *Act*, so I find that the Tenant did not give the Landlord proper notice of the end of the tenancy under the *Act*.

Even if the text message was an appropriate form, January 15, 2019 was not an acceptable effective date to end the tenancy according to section 45. Rather, the effective date must be on the day before the date on which rent is payable. In the evidence before me, the rent was payable on the first day of the month; therefore, the Tenant's effective date was January 31, 2019. According to section 53, incorrect effective dates are automatically corrected to the earliest date that complies with the *Act*, which was January 31, 2019.

The Tenant was required to pay a full month's rent to the Landlord for January, regardless of when she vacated the unit. Based on the undisputed evidence before me, I find that the Tenant only paid the Landlord half the rent she owed him in January 2019; I, therefore, award the Landlord **\$700.00** in unpaid rent, pursuant to section 67 of the *Act*.

*Security Deposit*

The Tenant provided her forwarding address on January 17, 2019, and the tenancy ended on January 31, 2019. Section 38(1) of the *Act* states:

**38 (1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Parties agreed, and the Landlord was aware at the time that the Tenant moved out on January 15, 2019, and that she provided her forwarding address on January 17, 2019. I find that the Landlord was required to return the \$700.00 security deposit or apply for dispute resolution fifteen within 15 days of January 17, 2019, or by February 1, 2019, pursuant to Section 38(1). The undisputed evidence before me is that the Landlord did not return the security deposit; however, he applied to claim against the security deposit on January 21, 2019. Therefore, I find the landlord complied with his obligations under Section 38(1).

Section 26 of the *Act* states:

**Rules about payment and non-payment of rent**

**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.

I have found that the Tenant owed the Landlord \$700.00 for unpaid rent for January 2019. There is no evidence before me that the Tenant had an order from an arbitrator allowing her to deduct all or a portion of the rent, nor was there any evidence that the Tenant applied to withhold rent. I therefore order the Tenant to pay the Landlord \$700.00 in unpaid rent for January 2019.

Based on the testimonial and documentary evidence before me and on a balance of probabilities, I award the Landlord \$700.00 in unpaid rent for January 2019, and I authorize the Landlord to retain the Tenant's \$700.00 security deposit.

As he was successful in this Application, I award the Landlord recovery of the cost of his filing fee in the amount of **\$100.00**. The Tenant must pay the Landlord \$100.00 as reimbursement of the filing fee for this Application.

### Conclusion

The Tenant unlawfully withheld \$700.00 of the rent she owed the Landlord for January 2019 rent. I award the Landlord \$700.00 from the Tenant in unpaid rent for January 2019. I authorize the Landlord to retain the Tenant's security deposit in the amount of \$700.00 in satisfaction of this of this award. I order the Tenant to pay the Landlord **\$100.00** as recovery of the filing fee for this matter.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 8, 2019

---

Residential Tenancy Branch