



# 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 February 04, 2019 (the “Application”). The Landlord sought to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and 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 deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord sought to recover February rent.

Two written tenancy agreements were submitted as evidence as well as an amendment to one of the agreements. The parties agreed these are accurate. The most recent agreement was for a term starting March 01, 2018 and ending February 28, 2019. Rent was \$1,200.00 due on or before the first of each month. A \$600.00 security deposit had been paid.

The parties agreed on the following. The tenancy ended December 30, 2018. The Tenants did not give a forwarding address to the Landlord. The parties did a move-in and move-out inspection.

The Landlord testified as follows in relation to February rent.

The Tenants signed a fixed term agreement ending February 2019. The Tenants ended the tenancy at the end of December. She listed the rental unit on two websites. She renewed the listing on one of these sites every month. The listings were refreshed regularly. She did receive email responses from people who were interested. She does a pre-screening and not everybody replied to this. She did several viewings of the rental unit. Some of the people who viewed the rental unit did not complete an application for it and some were not a good fit. The rental unit was re-rented for April 01, 2019. She is a single mother with a daughter living at the house where the rental unit is located and therefore needs to be selective about who rents the unit. She listed the rental unit for less rent and rented it for less rent.

In relation to an issue raised by the Tenants in their written submissions, the Landlord testified that she always lists the rental unit for the first of the following month because people are usually looking for a place for the following month and not immediately.

The Landlord submitted evidence of the listings and correspondence with potential tenants.

The Tenants testified as follows.

They vacated the rental unit by December 15<sup>th</sup>. The unit was re-listed on one website, but the Landlord indicated it was available January 1<sup>st</sup>. She should have indicated it was available immediately. The unit was not listed on the second website until January 14<sup>th</sup> or 16<sup>th</sup>. This listing showed the unit available for February 1<sup>st</sup> and not immediately. The Landlord excluded people looking for a place immediately by showing the unit as

available for the first of the following month. The Landlord should have posted the listing on more websites or platforms to get as much interest as possible.

The Tenants acknowledged that the Landlord needed to be selective but suggested that the Landlord could have signed a three-month tenancy agreement with prospective tenants to see if they would work out and then had them sign a longer term if they did work out. This is what the parties had done in relation to this tenancy.

The Tenants further testified as follows.

Some of the people who responded to the listing looked like decent people. The Landlord did not update the website listings daily so the listing would fall back in the queue. The Landlord should have updated the listings daily.

I understand from the Tenants' written submissions that they gave notice to end the tenancy November 14, 2018.

### 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.

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.

[emphasis added]

Policy Guideline 3 deals with claims for loss of rent and states in part:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

...

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by rerenting the premises at a reasonably economic rent...

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security 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 deposit at the end of a tenancy.

Based on the testimony of the parties, I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

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

The parties agreed the Tenants did not give a forwarding address to the Landlord. Therefore, section 38(1) of the *Act* was not triggered. The Landlord has complied with her obligations under section 38 of the *Act*.

Section 45 of the *Act* states:

(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.

[emphasis added]

This was a fixed term tenancy ending February 28, 2019. The Tenants breached section 45 of the *Act* by ending the tenancy early.

I accept that the Landlord lost February rent given the Tenants' breach as the Landlord testified that the unit was re-rented for April 01, 2019 and the Tenants did not dispute this.

The Tenants submitted that the Landlord failed to mitigate her loss.

The requirement is that the Landlord act reasonably to minimize the loss. I find the Landlord did so. The evidence shows the Landlord actively tried to re-rent the unit. The Landlord posted the rental unit for rent on a well-known and easily accessible rental website not long after receiving notice from the Tenants. She then posted it for rent on a second well-known and easily accessible rental website. I do not agree that the Landlord was required to do more than this. Nor do I find the Landlord was required to update the listings daily. I accept her testimony that she refreshed them regularly and find this sufficient.

I agree the Landlord was permitted to be selective to an extent and am not satisfied she was so selective such that she failed to mitigate her loss. I do not find the failure to list the rental unit as available immediately to be significant enough to result in a finding that the Landlord failed to mitigate her loss. I acknowledge that the points raised by the Tenants are good ones and that the Landlord could have done more to re-rent the unit. However, the standard is not one of perfection but of reasonableness and I find the Landlord took reasonable steps to re-rent the rental unit.

In relation to the submission that the Landlord could have rented the unit for a shorter term and ended it if the tenant was not a good fit, the *Act* does not allow a landlord to end a tenancy simply because the tenant is not a good fit. The Landlord could end a tenancy under section 47 of the *Act* for cause but this section does not apply where a landlord simply does not think the tenant is a good fit.

I am satisfied the Landlord mitigated her loss. I am satisfied the Landlord is entitled to loss of rent for February. I award the Landlord the \$1,200.00.

Given the Landlord was successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlord is entitled to \$1,300.00 in compensation. The Landlord can keep the \$600.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for \$700.00.

### Conclusion

The Landlord is entitled to \$1,300.00 in compensation. The Landlord can keep the \$600.00 security deposit. The Landlord is issued a Monetary Order for \$700.00. This Order must be served on the Tenants. If the Tenants fail 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: April 01, 2019

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Residential Tenancy Branch