



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S MNDL-S FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenants' security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord S.R. attended and spoke on behalf of both the landlords. Tenant R.C. attended and spoke on behalf of both the tenants.

As both parties were present, service of documents was confirmed. The tenant testified that they were in receipt of the landlord's Notice of Dispute Resolution Proceeding package and evidence which was sent to the tenants by Canada Post registered mail. The tenants' submitted evidence consisted of email communications between the tenants and the landlords. The landlord testified that she did not receive the tenants' evidence, which was sent by email. I note that serving documents by email is not an acceptable method of service under the *Act*. As such, I have not considered the tenants' documentary evidence however the tenant was a liberty to provide verbal testimony in relation to their evidence during the hearing.

Based on the testimonies of the parties, I find that the tenants were served with the notice of this hearing in accordance with section 89 of the *Act*, and that the evidentiary documents for this hearing were served in accordance with section 88 of the *Act*, with the exception of the tenants' evidence as explained above.

#### Preliminary Issue – Amendment of Landlord's Application

At the outset of the hearing, the landlord advised that she sought to amend the amount of rental revenue loss claimed to reduce her claim from three months of rent payable (\$6,600.00) to one month's rent payable (\$2,200.00). As this requested amendment to the landlord's claim is not prejudicial to the tenant, pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to reduce the claim for rental revenue loss to \$2,200.00.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to a monetary award for compensation for damage or loss?

Are the landlords entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This fixed-term tenancy began March 1, 2018 with a scheduled end date of February 28, 2019.
- Monthly rent of \$2,200.00 was payable on the first of the month.
- At the beginning of the tenancy, the tenants paid a security deposit of \$1,100.00 and a pet damage deposit of \$550.00, which continue to be held by the landlords.
- The rental unit consists of a one bedroom and one bathroom furnished apartment.

The landlord submitted into evidence a "Cleaning Checklist" document used by the parties to document the condition of the rental unit at move-out.

The document noted "will need professional clean" and "200.00 will be deducted from deposit". The document also referenced that the "sofa is marked in 2 places" and "cost to be determined".

The parties agreed that they had both signed the document, dated November 30, 2018, at the move-out condition inspection conducted on that date. The tenant confirmed that he had agreed to the landlords retaining \$200.00 from the security deposit for cleaning costs and the costs pertaining to the damage to the sofa.

The landlord is seeking to retain \$78.00 and \$80.00, for a total of \$158.00 for the replacement of an arm rest cover and cushion cover, respectively. The landlord noted the costs for these claims on her monetary order worksheet dated December 5, 2018 and the amended monetary worksheet dated January 28, 2019.

As the deductions from the security and pet damage deposits pertaining to the cleaning costs and damage to the sofa were undisputed, I confirmed with the parties that the disputed amount of the remaining security and pet damage deposits totalled \$1,292.00.

The landlord testified that the tenants ended their fixed-term tenancy early in contravention of the tenancy agreement and the *Act*. As such, the landlord sought compensation of one month's rent payable of \$2,200.00 as compensation for lost rental revenue. The landlord requested to retain the tenants remaining security and pet damage deposits in partial satisfaction of this claim.

The following testimony was provided by the parties regarding the landlords' claim for compensation for rental revenue loss, as follows:

- On October 18, 2018, the tenants provided notice to the landlord by email that they wished to end their tenancy in a few weeks.
- The landlord testified that within a few days she posted an advertisement to re-rent the unit on two classified websites.
- The landlord testified that she advertised the rental unit at the same monthly rent of \$2,200.00 however the landlord changed the rental term from a one-year term to a short-term rental of one to four months. The landlord testified that the rental unit needed some renovation work and therefore she only wanted to rent the unit for a few months as she would then undertake the needed renovation work.

- The tenants provided vacant possession of the rental unit to the landlord on November 30, 2018, and also provided the landlord with their forwarding address in writing on that day.
- The landlord testified that she had her first showing of the rental unit in mid-December 2018.
- In the middle of December 2018, the landlord signed a tenancy agreement with a new tenant for the rental unit, for a tenancy beginning on January 1, 2019.

The landlord submitted no documentary evidence in support of her efforts to re-rent the unit, such as copies of the rental listings or responses to inquiries from prospective tenants.

### Analysis

In this case, the landlord has claimed for compensation for rental loss for the month of December 2018 due to the tenants ending a fixed term tenancy prior to the scheduled end date in the tenancy agreement.

Based on the testimony of both parties and the tenancy agreement submitted into documentary evidence, I find that the landlords and tenants had a fixed-term tenancy with an end date of February 28, 2019. I find that rent was payable on the first day of each month per the terms of the tenancy agreement.

Section 45(2) of the *Act* sets out the requirements that must be met for a tenant to end a fixed term tenancy, including that a tenant cannot end a fixed term tenancy earlier than the end date of the tenancy as specified in the tenancy agreement, as follows:

- 45 (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.

In this case, the tenants provided notice on October 18, 2018 that they intended to end the tenancy early. The tenants returned vacant possession of the rental unit to the landlord on November 30, 2018. Therefore, I find that the tenants failed to comply with the *Act* and the terms of the fixed term tenancy agreement by ending the tenancy early, and as a result the landlords experienced a monetary loss.

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

The landlord testified that a new tenancy agreement was signed in the middle of December 2018 with a tenancy start date of January 1, 2019. Therefore, the landlords found a new tenant to move in on a date one month following the date that the notice took legal effect. It is possible that the landlords were unable to find an interested tenant to move in earlier than this date. However, as the landlords are seeking a monetary claim in this matter, the landlords bear the burden of proof, on a balance of probabilities to provide sufficient evidence that they did whatever is reasonable to minimize the damage or loss claimed.

Residential Tenancy Policy Guideline 5. Duty to Minimize Loss provides guidance regarding the expectation for a landlord to mitigate a rental income loss due to a tenant ending a fixed-term tenancy early, as follows:

*The landlord who does not advertise for a new tenant within a reasonable time after the tenant vacates a rental unit or site prior to the expiry of a fixed term lease may not be entitled to claim loss of rent for the first month of vacancy; however, claims for loss of rent for subsequent months may be successful once efforts to find a new tenant are made.*

...

*In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent.*

The landlord has failed to submit any documentary evidence to prove the landlord made “reasonable efforts” to find a new tenant to move in on the date following the date the notice takes legal effect. Documentary evidence, such as copies of advertising listings, would confirm details, such as: when the rental unit was listed; where it was listed; how much it was listed for; were the tenancy terms the same; were the same facilities/services included, etc.

Further, the landlord testified that she changed the terms of the tenancy, from a one-year term to a short-term rental of one to four months. The landlord stated that she was surprised that it took her so long to re-rent the unit. I find that the landlord’s decision to change the terms of the length of the tenancy may have been a significant factor in impeding the landlord from finding a new tenant in a timelier manner. As such, I find that the landlords failed to establish that they have done whatever is reasonable to minimize the damage or loss claimed.

Therefore, based on the evidence and testimony provided, on a balance of probabilities, I find that the landlords failed to present sufficient evidence to meet the burden of proof to establish all four points required by a claimant seeking a monetary claim of compensation pursuant to section 67 of the *Act*. As such, the landlord’s monetary claim for rental revenue loss of \$2,200.00 is dismissed in its entirety.

The landlord continues to hold the tenants' security and pet damage deposits. As the landlords' monetary claim for rental revenue loss is dismissed, I order that the landlords must return the remaining deposits held, totalling \$1,292.00, to the tenants.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,292.00 pursuant to sections 38, 67 and 72 of the *Act*.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: April 15, 2019

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Residential Tenancy Branch