



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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlords' dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence. The tenant did not submit any written evidence for this hearing.

### **Preliminary Issue: Adjournment of Hearing**

The tenant requested an adjournment of the hearing, stating that he was in and out of the hospital during the last three months, and did not have time to prepare for the hearing. The tenant did not want to disclose the details of why he was in the hospital, stating that it was private information that he did not want to discuss openly.

The landlords were opposed to the application for an adjournment stating that the matter had been outstanding for some time, and that they were ready to proceed. The landlords also provided undisputed testimony that the tenant was still able to work. The

landlords felt that the tenant has not provided a satisfactory reason for why he was not prepared for the hearing.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the “Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing”.

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

In consideration of the submissions by both parties, I was not satisfied that an adjournment was necessary or justified. I found that the explanation provided by the tenant did not meet the requirements of Rule 6.4, namely that an adjournment would be prejudicial to other party who was prepared to proceed with the hearing. Furthermore, in the absence of sufficient supporting information about why the tenant was unable to prepare for the hearing, I was not satisfied that an adjournment request was not due to the intentional actions or neglect of the tenant. The request for an adjournment was not granted. After I had informed the tenant of my decision regarding his adjournment request, the tenant wanted to provide further submissions, and stated that he suffered from mental health issues. As the decision was already made to not grant the adjournment and as I did not find this new information was not sufficient enough for me to re-consider my original decision, the hearing proceeded.

### **Issue(s) to be Decided**

Are the landlords entitled to monetary compensation for damage and losses?

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

### **Background and Evidence**

This month-to-month tenancy began in May of 2015, and ended on December 1, 2018. Monthly rent was set at \$825.00, payable on the first of the month. The current landlords took over the tenancy in May of 2017, and still hold the security deposit of \$350.00 for this tenancy.

The landlords are seeking a monetary order as follows:

<b>Item</b>	<b>Amount</b>
Loss of Rental Income (December 2018)	\$825.00
Retention of Security Deposit for damages & cleaning	350.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$1,275.00</b>

The landlords provided undisputed testimony that the tenant moved out on December 1, 2018 without advanced notice. The landlords testified that the tenant had texted the landlord at 5:30 a.m. on the morning of December 1, 2018 that he was moving out. The tenant admitted that he did not pay rent for the month of December 2018. The tenant testified that he had many issues with the tenancy, but could not file an application for dispute resolution due to his medical issues.

The landlords testified that they cleaned the rental unit as the tenant failed to do so, and tried to re-rent the rental unit. The landlords confirmed that they were able to re-rent the rental unit for February 15, 2019 for \$925.00 in monthly rent, but that the tenancy did not work out. The landlords testified that they had hired a property manager in order to assist in finding a new tenant.

The landlords are also seeking to retain the entire security deposit as the tenant failed to clean the rental unit. The landlords submitted photos to support their claim.

### **Analysis**

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove, on a balance of probabilities, that the tenant had caused damage and losses in the amounts claimed by the landlords.

Section 45(1) deals with a Tenant's notice in the case of a periodic tenancy:

### **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.

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

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

The landlords provided undisputed evidence at this hearing that the tenant did not give one month notice to end this tenancy as required by section 45(1)(a) of the *Act*. I then must consider whether the landlords had sufficiently mitigated their damages. The landlords testified in the hearing that they had made efforts to re-rent the rental unit as soon as possible, and was not able to find a new tenant until February 2019. I find that the landlords provided sufficient evidence to support that they had suffered a financial loss due to the tenant's failure to comply with section 45(a)(a) of the *Act*. I am satisfied that the landlords had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for December 2018, as is required by section 7(2) of the *Act*. I, therefore allow the landlords' monetary claim for one months' rent.

The landlords also made a monetary claim for cleaning and damages in the equivalent value of the security deposit. Sections 23 and 35 of the *Act* require the landlords to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*. The landlords did not submit a copy of a move in or move out inspection report in their evidentiary materials. Furthermore, the landlords have the burden of proving the value of their loss. I am not satisfied that the landlords had provided sufficient evidence to support the actual value of the loss that they are claiming. On this basis, I dismiss the landlords' monetary claim in the amount of \$350.00 for cleaning and losses.

As the landlords were partially successful in their application, I am allowing the landlords to recover half of the filing fee from the tenant.

The landlords continue to hold the tenant's security deposit of \$350.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in satisfaction of the monetary claim awarded above.

## **Conclusion**

I issue a Monetary Order in the amount of \$525.00 in the landlords' favour in as set out in the table below. This allows the landlords to recover half of the filing fee, and keep the tenant's security deposit in satisfaction of the monetary order granted for the tenant's failure to comply with section 45 of the *Act*. The remaining portion of the landlords' monetary claim is dismissed without leave to reapply.

<b>Item</b>	<b>Amount</b>
Loss of Rental Income (December 2018)	\$825.00
Half of Filing Fee	50.00
Less Security Deposit Held by Landlords	-350.00
<b>Total Monetary Order</b>	<b>\$525.00</b>

The landlords are provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant 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 16, 2019

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Residential Tenancy Branch