



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL MNDCL MNRL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on June 10, 2018 and the tenants moved out of the rental unit on October 3, 2018. Rent in the amount of \$1,100.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears to the end of September, 2018. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 as well as a pet

damage deposit in the amount of \$50.00. A previous Arbitration dealt with the deposits on March 25, 2019. The rental unit is a basement suite, and the landlord resided in the upper level of the home during this tenancy.

A copy of the tenancy agreement has been provided which names the landlord (GJM) and another person (KS) as landlords, and the tenant (JR) and another person (DFK) as tenants. Neither the landlord, (KS), nor the tenant, (DFK) are named as parties to this dispute.

The landlord testified that he received notice to end the tenancy from the tenants on September 25, 2018 from the mailbox outside of his house, which is dated August 30, 2018 with an effective date of vacancy of October 1, 2018, and a copy has been provided as evidence for this hearing. The landlord does not believe it was in the mailbox on August 30, 2018, but doesn't check it regularly. The landlord, KS, who was the landlord's girlfriend at the time, told the landlord via FaceBook Messenger on or about September 24, 2018 that the tenant told her that the tenant's notice was in the mailbox, but there was no mention of an end to the tenancy prior to that. Copies of numerous text messages between the landlord and the tenants have been provided for this hearing.

The landlord had told the tenant (DFK) that the landlord intended to keep the security deposit in lieu of 20 days pro-rated rent for October, so the tenant replied that they would be moving out on October 21, 2018 and the landlord assumed they would still be in the rental unit until then. However, the tenants started moving out on October 1, 2018 and wanted to pro-rate rent for October.

The landlord waited to advertise to be sure the tenants were actually moving, and starting about mid-October, 2018 advertised the rental unit for the same amount of rent, and availability of November 1, 2018, on various social media sites, including the local classified page.

The landlord had no difficulty finding a suitable tenant and re-rented for November 1, 2018.

The landlord claims unpaid rent for October, 2018 in a pro-rated amount of \$750.00 for receiving notice to end the tenancy late, as well as \$1,100.00 for loss of rental revenue and recovery of the \$100.00 filing fee.

**The tenant** testified that she gave written notice to end the tenancy to the landlord (KS), who was the only person the tenants dealt with as a landlord during the tenancy until the tenants decided to move out. Rent was paid to her by e-transfer each month.

On September 19, 2018 the tenant sent a text message to the landlord (KS) reminding her that the tenants had found a place to move into and were leaving on October 1, 2018. She replied instructing the tenant to give a notice to end the tenancy to the other landlord (GJM). The notice to end the tenancy was in the landlord's mail box for a whole month; the tenants put it there in the evening of August 30, 2018.

On September 6, 2018 the tenant told the landlord (KS) that she had placed the notice in the landlord's mailbox and she said she would retrieve it, and the tenants assumed that she did.

The landlords had separated, and when the tenant was told to give notice to the other landlord, the tenants understood that their notice to end the tenancy was rejected, so the tenants sent a message to the other landlord saying that they had learned he was moving into the rental unit.

### Analysis

The *Residential Tenancy Act* specifies how a tenancy ends, and in the case of a notice given by a tenant, the notice must be given the day before rent is payable and must be effective at the end of the following month. In this case, the parties agree that the tenants' notice is dated August 30, 2018 and that it was served to the landlord by placing it in the landlord's mailbox. Regardless of what date it actually landed in the mailbox, there is no dispute that it was no earlier than August 30, 2018. Documents served by placing them in a mailbox or other conspicuous place are deemed to have been served 3 days later, which I find in this case is September 2, 2018. The tenancy agreement states that rent is payable on the 1<sup>st</sup> day of each month. Since the notice was not served prior to the date that rent was payable, the effective date of vacancy must not be sooner than the end of the following month, or October 31, 2018 and rent is payable to that date.

Therefore, I find that the landlord is entitled to recover rent for the month of October, 2018 in the amount of \$1,100.00.

With respect to loss of rental revenue, the landlord testified that he advertised for an availability of the rental unit for November 1, 2018 and had no difficulty in re-renting effective November 1, 2018. I find that the landlord has not established any loss of rental revenue.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in the amount of \$1,200.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,200.00.

This order is final and binding and may be enforced.

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: May 10, 2019

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Residential Tenancy Branch