



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on February 3, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Tenants as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that he served his Application and documentary evidence package to the Tenants by registered mail on February 6, 2019. The Tenants confirmed receipt. The Tenants testified that they served the Landlord in person with their documentary evidence in person on or around February 15, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A tenancy agreement was submitted into evidence which confirms that the tenancy between the parties began on April 1, 2015. Rent in the amount of \$1,410.00 was due to the Landlord each month. The Tenants paid a security deposit in the amount of \$630.00 as well as a pet deposit in the amount of \$630.00 which has since been returned to the Tenants. The parties testified that the tenancy ultimately ended on January 15, 2019 once the Tenants moved out of the rental unit.

The Landlord is seeking a monetary order in the amount of \$705.00 for compensation relating to loss of rent for half of January 2019.

The Landlord testified that he served the Tenants with a One Month Notice to End Tenancy for Cause (the "One Month Notice") on November 28, 2018 with an effective vacancy date of January 1, 2019. The Tenants confirmed receipt.

The Landlord stated that the Tenants made an application to dispute the One Month Notice, at which point a dispute resolution hearing was scheduled for January 15, 2019.

The Landlord stated that on December 15, 2018 the Tenants served the Landlord with a notice to end tenancy which indicated that the Tenant's wished to end their tenancy on January 15, 2019.

On January 15, 2019 the parties attended their dispute resolution hearing during which the parties mutually agreed to end the tenancy on January 15, 2019. The parties agreed that the Tenant vacated the rental unit on that date.

The Landlord stated that the Tenants did not provide him with a proper notice to end tenancy as the effective vacancy date of the Tenant's notice should have been January 31, 2019. The Landlord stated that the Tenants have only paid him rent for half of the month of January 2019. The Landlord stated that he was unable to re-rent the rental

unit until March 1, 2019; however is only seeking \$705.00 from the Tenants, which represents the remaining portion of the unpaid rent for January 2019.

The Tenants stated that the Landlord accepted their notice to end tenancy on December 15, 2018 and responded to the Tenants on the same date. The Tenants submitted a copy of the Landlord's response in which the Landlord accepts the Tenant's notice to end tenancy effective January 15, 2019 and accepted a pro-rated amount of rent in the amount of \$705.00.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

According to Section 45 (1) of the *Act*, 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.

In this case, the parties agreed that the Tenants provided the Landlord with their notice to end tenancy on December 15, 2018 before the parties mutually agreed to ending the tenancy on January 15, 2019. While the Tenants ended the tenancy early, without providing the Landlord with proper notice pursuant to Section 45(1) of the *Act*, I find that the Landlord accepted the Tenant's notice to end tenancy on January 15, 2019 regardless. Furthermore, I am satisfied that the Landlord indicated to the Tenant's that they would only be responsible for paying a pro-rated amount of rent for January 2019 in the amount of \$705.00.

In light of the above, I find that the Landlord is not entitled to go back on the agreement he set out with the Tenants and claim for further rent for January 2019. As such, I dismiss the Landlord's Application without leave to reapply. As the Landlord was not successful with his Application, I find that the Landlord is not entitled to the recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

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 28, 2019

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Residential Tenancy Branch