



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for monetary compensation for unpaid rent and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and one Tenant were present for the teleconference hearing. The Tenant stated that he did not receive the Notice of Dispute Resolution Proceeding package or a copy of the Landlord’s evidence and instead found out about the hearing through an email from the Residential Tenancy Branch.

The Landlord stated that she sent each Tenant the documents by registered mail, both of which were returned to her as unclaimed. The Landlord submitted a photo of the returned envelopes as well as copies of the registered mail receipts. The registered mail tracking numbers for each package are included on the front page of this decision. The Landlord testified that both Tenants were served at the addresses provided at the start of the tenancy. The Tenant confirmed that the address the package was sent to was correct and stated that he had been away and therefore unable to claim the mail.

Despite not claiming the mail, I accept the evidence before me that shows that both Tenants were duly served by registered mail which is an approved method of service under Sections 88 and 89 of the *Act*. Therefore, as it was determined that the Tenants were deemed served under Section 90 of the *Act*, the hearing continued. The Landlord confirmed receipt of a copy of the Tenant’s evidence.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy was already in place when the Landlord purchased the home in June 2018. The parties signed a new tenancy agreement on June 8, 2018, which the Landlord stated was the day she took possession of the rental unit. Monthly rent in the amount of \$1,500.00 was due on the first day of each month. Although the tenancy agreement notes a security deposit of \$750.00, the parties agreed that a security deposit was not paid. The Tenants moved out on December 21, 2018.

The Landlord has applied for compensation in the amount of \$1,500.00 for unpaid rent for January 2019. The Landlord provided testimony that on September 11, 2018 she received an email from the Tenants informing her that they would be moving out by December 21 or 22, 2018. The email was submitted as evidence and states that the Tenants will be moving out at the end of December. In another email dated September 11, 2018 the Tenants inform the Landlord that they have someone who might be interested in renting the unit and the Landlord responded with "that sounds good".

The Landlord stated that she only received the email from the Tenants and never received official notice in writing. The Landlord testified that she started looking for a new tenant right away and found new tenants for January 1, 2019.

The Landlord testified that on December 5, 2018 she received another email from the Tenants stating that their jobs were extended, and they would like to stay in the rental unit in January 2019. The Landlord stated that she spoke to the new tenants and made arrangements for them to move in for February 1, 2019 instead of January 1, 2019. The emails were submitted as evidence. The email dated December 5, 2018 states in part the following:

*[Other Tenant] and I have been given another month at least at this job, we are wondering if you haven't rented the place yet maybe we can stay on? It's possible that the whole thing including [original landlord's] furniture move could be put off for a month. Let me know your thoughts.*

On December 8, 2019 the Tenant sent an email to the Landlord stating that they would be fine to live at the rental unit in January 2019 with no furniture and again asked for the Landlord's thoughts. In this email, the Tenants also mentioned being unsure of the time frame that the new tenants would like to move in.

The Landlord testified that she asked the Tenants for confirmation by email on December 12, 2018 and received a response on December 13, 2018. The Tenants responded that their jobs would be ending on December 21, 2018 and therefore they would still be moving out at the end of December 2018.

The email from the Landlord to the Tenants on December 12, 2018 stated the following:

*I'm needing confirmation from you and [the other Tenant] regarding your stay at the house until February 1, 2019. I need to hear back from you and [the other Tenant] so I can move forward with my new tenants. Please let me know if you are in agreement with renting the house of January 1, 2019. I have people waiting on me.*

The Tenant responded on December 13, 2018 stating that their last day of work would be December 21, 2018 and therefore this would be their move-out day as well.

The Landlord stated that she had trusted the communication from the Tenants that they would be staying through January 2019 and tried to help them out by speaking to the new tenants about changing the move-in date. The Landlord testified that as the new tenants had to give notice at their current rental unit, they were not able to change their plans again and move in any earlier than February 1, 2019.

The Tenant was in agreement that they provided notice to end their tenancy at the end of December 2018 through an email dated September 11, 2018. He stated that as he was not aware of the process, he asked the Landlord if she would like the notice in writing as well, but that she did not respond. As the Landlord started advertising and showing the rental unit right away, the Tenant stated his belief that she had accepted their notice to end the tenancy through email.

The Tenant provided further testimony that in December 2018 they emailed the Landlord to ask about the possibility of staying in January 2019 and whether that would be possible. However, he stated that this was never confirmed with the Landlord and instead was just an inquiry as to whether it would work as an option.

The Tenant stated that they received an email from the Landlord on December 12, 2018 asking them to confirm whether they were staying through January 2019. The Tenant submitted that they responded the next day confirming that they would be moving out on December 21, 2018 as originally planned.

Both parties submitted email communication into evidence. This included discussions about the move-out date as well as other communication such as email notice from the Landlord to enter the rental unit.

The parties were offered the opportunity to discuss settlement but were not able to come to an agreement.

### Analysis

Section 45 of the *Act* states the process for a tenant to provide notice to end the tenancy. Along with the timing and other requirements, this Section also notes that a tenant's notice must comply with Section 52 of the *Act*. Section 52 of the *Act* states that a notice must be in writing and be signed. However, I accept the evidence before me that shows that the parties established communication by email throughout the tenancy, with notices from both parties sent and accepted by email. I also find that the Landlord accepted the Tenants' notice by email, given that she began advertising and showing the rental unit right away.

As such, I find that the Tenants' notice provided by email on September 11, 2018 was sufficiently served for the purposes of the *Act*. Therefore, I find that the Landlord was

aware that the Tenants would be moving out of the rental unit at the end of December 2018.

Regarding the Landlord's claim for January 2019 rent, Section 7 of the *Act* states that if a party breaches the *Act*, *Residential Tenancy Regulation* or tenancy agreement, they must compensate the other party for any losses that occur as a result.

As stated above, I find that the Tenants sufficiently served their notice to end the tenancy at the end of December 2018 through email. However, based on the email evidence before me, I do not find that notice was provided to end the tenancy at the end of January 2019. Upon review of the emails submitted by both parties, I find that the Tenants inquired as to the possibility of staying through January 2019 but that this was never confirmed.

Further, I find that the email from the Landlord on December 12, 2018 asking for confirmation from the Tenants that they will be staying in January 2019 supports my finding that confirmation had not been provided by the Tenants prior to this.

Although the Tenants responded the next day confirming their original plan to leave at the end of December 2018, it seems that the Landlord had already made arrangements with the new tenants to move in for February 1, 2019. As the Landlord did this prior to having confirmation, I find that the Tenants are not responsible for paying January 2019 rent.

As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the burden of proof is on the Landlord. As stated, I am not satisfied that the Landlord met the burden of proof in establishing that the Tenants were in breach of the *Act*.

Based on the testimony and evidence of both parties, I find that notice to end the tenancy was provided for the end of December 2018 and while discussion occurred regarding staying an additional month, no further notice was provided or accepted. Therefore, as this was a month-to-month tenancy for which the Tenants were able to provide at least one month notice to end the tenancy, I do not find sufficient evidence to establish that they were in breach of the *Act*. As such, I decline to award any compensation to the Landlord.

As the Landlord was not successful with the Application for Dispute Resolution, I decline to award the recovery of the filing fee.

Conclusion

The Application for Dispute Resolution 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 2, 2019

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Residential Tenancy Branch