



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PARK PLACE VENTURES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

On February 8, 2019, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit to this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

O.W. attended the hearing as an agent for the Landlord. The Tenant also attended the hearing. All in attendance provided a solemn affirmation.

O.W. advised that a Notice of Hearing package and evidence was served by registered mail on February 13, 2019 to the Tenant, and the Tenant confirmed receiving this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing package and evidence.

The Tenant advised that she served her evidence to the Landlord by mail sometime in April and the Landlord confirmed that he received this. As service of this evidence complies with the time frame requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on June 1, 2018 as a fixed term tenancy for one year. However, the tenancy ended on January 31, 2019 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$1,400.00 per month, due on the 31<sup>st</sup> day of each month. A security deposit of \$800.00 was also paid.

O.W. advised that the Tenant's father was mostly in communication with him and advised him by text that the tenancy would be ending. However, he did not receive any written notice that the tenancy would be ending. Once the Tenant gave up vacant possession, he immediately attempted to re-rent the rental unit, but only secured a new tenant for March 1, 2019. As such, he suffered a rental loss of February 2019 rent. However, he is only seeking to recover a portion of the rent totalling **\$800.00** as a favour to the Tenant.

The Tenant advised that she provided a letter in writing to the Landlord in December 2018 stating that she would be ending the tenancy on January 29, 2019. She stated that she put this notice under the door of the electrical room as this was a regular form of contact with another representative of the Landlord. She questioned why the Landlord would not attempt to re-rent the rental unit earlier than after she vacated the rental unit.

O.W. submitted that the room that the Tenant claims to have given her notice to end the tenancy is a boiler room where many employees frequent, and as he never received this notice, he speculated that it would have likely been thrown away if she did place it there. As well, this was not an appropriate or authorized place to serve any notices to the Landlord.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for lost rent, there is no dispute that the parties entered into a fixed term tenancy agreement from June 1, 2018 for a period of one year, yet the tenancy effectively ended when the Tenant vacated the rental unit on January 31, 2019.

Sections 44 and 45 of the *Residential Tenancy Act* set out how tenancies end. It also specifies that a Tenant must give written notice to end a tenancy and that notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

While the Tenant advised that she provided the Landlord with written notice to end the tenancy, she did not have proof of this. In addition, while she stated that the electrical room is where she always provided correspondence to the Landlord, I find that this is an odd place to exchange written documentation with the Landlord, especially given that the service address for the Landlord's agent is provided on the tenancy agreement, and that this address is located in the same building as the rental unit. Without more compelling evidence, I am not satisfied, on a balance of probabilities, that the Tenant provided written notice to end the tenancy.

Furthermore, while it was the Tenant's position that it was urgent for her well-being to end the tenancy in the manner that she did, and that it was justified, there is no such provision in the *Act* which would allow her to end the tenancy in this manner without being potentially responsible for future rental loss.

As such, I am not satisfied that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 44 and

45 of the Act. Moreover, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the above, I am not satisfied that the Tenant gave the Landlord sufficient, if any, written notification that she was ending the tenancy and vacating the rental unit. While the evidence does indicate that there was confusion about mitigation from both parties, I am satisfied that without a notice in writing advising the Landlord when the Tenant would be vacating, he was not certain about when he should actively start advertising to re-rent the unit. As such, I am satisfied that the Landlord made attempts to re-rent the rental unit as quickly as possible after January 31, 2019, and as the Landlord re-rented the rental unit on March 1, 2019, I am satisfied that the Tenant is responsible for the February 2019 rent. However, as the Landlord is only seeking compensation for this loss in the amount of \$800.00, I grant the Landlord a Monetary Order in the amount of **\$800.00** to satisfy the Landlord's loss for rent owing for the month of February 2019.

As the Landlord was successful in their claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the Act, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the Act, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Landlord request for a portion of February 2019 rent	\$800.00
Security deposit	-\$800.00
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$100.00</b>

### Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenant must be served with **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: June 3, 2019

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Residential Tenancy Branch