



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlords applied for a monetary order in the amount of \$2,250.00 for unpaid rent or utilities, to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlords and the tenant attended the teleconference hearing and gave affirmed testimony. The parties were given the opportunity to ask questions about the hearing process. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that they were served with the landlords' documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that they did not serve the landlords with documentary evidence. I find the tenant was sufficiently served under the *Act* as a result.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on August 1, 2018. Rent was \$1,500.00 per month and was due on the first day of each month. The tenant paid a \$750.00 security deposit at the start of the tenancy, which the landlords continue to hold.

The landlords' monetary claim of \$2,250.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. February 2019 rent	\$1,500.00
2. March 2019 rent	\$1,500.00
<b>Subtotal</b>	<b>\$3,000.00</b>
<i>Less tenant's security deposit of \$750.00</i>	<i>-\$750.00</i>
<b>TOTAL</b>	<b>\$2,250.00</b>

Regarding item 1, the landlords have claimed unpaid rent of \$1,500.00 for the month of February 2019. The landlords testified that the tenant failed to provide written notice before vacating the rental unit on January 31, 2019. In addition, the tenant failed to provide their written forwarding address after vacating the rental unit.

The tenant stated that both he and the landlord are members of the Canadian Forces and that the landlord was aware that he would be deployed. The tenant stated "due to my negligence I didn't put my notice in writing". The landlords stated that that they were able to re-rent the rental unit as of April 1, 2019. The landlords did not provide any testimony or documentary evidence related to their attempts to re-rent the rental unit, such as copies of advertisements and related dates and times, etc.

## Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Item 1** – Regarding item 1, there is no dispute that the tenant failed to provide written notice to the landlords regarding the tenant vacating the rental unit. Therefore, I find that section 45(1) and (4) of the *Act* applies and states:

### **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.**

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

[Emphasis added]

Based on the above, I find the tenant breached the month to month/periodic tenancy by failing to give the landlords written notice which is required under section 52 of the *Act*, and failed to serve that notice on the landlords before the end of December 31, 2018 as rent is due on the first day of each month. Therefore, I find the tenant breached sections 45(1) and 52 of the *Act*. In addition, I find that the tenant breached section 26 of the *Act* which states:

#### **Rules about payment and non-payment of rent**

**26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act,** the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Emphasis added]

Consequently, I find the tenant is responsible for the rent owing for February 2019. Therefore, I find the landlords have met the burden of proof for item 1 and I grant the landlords **\$1,500.00** accordingly.

**Item 2** – Firstly, the landlords did not enter into a fixed-term tenancy with the tenant. As a result, the tenant is only required to provide 1 month notice to end the tenancy, which is why item 1 was granted above. Therefore, under the *Act* the landlords are not entitled to loss of rent for the second month after the tenant vacated, March 2019. In addition, I find the landlords failed to comply with section 7 of the *Act*, which states:

#### **Liability for not complying with this Act or a tenancy agreement**

**7 (1)** If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

**(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.**

[Emphasis added]

The landlords failed to provide any testimony or documentary evidence regarding specific attempts to advertise the rental unit and I find the landlords have provided insufficient evidence to meet parts one, two and four of the test for damages or loss regarding item 2 above. Therefore, I find the landlords have not met the burden of proof for item 2 and as a result, I dismiss item 2 without leave to reapply, due to insufficient evidence.

As the landlords' application was partially successful, I grant the landlords **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee.

I find that the landlords have established a total monetary claim in the amount of **\$1,600.00** comprised of \$1,500.00 for item 1, plus the \$100.00 filing fee.

As the landlords have claimed against the tenant's security deposit of \$750.00, which has accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlords to retain the tenant's full \$750.00 security deposit in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order for the balance owing by the tenant to the landlords under section 67 of the *Act* in the amount of **\$850.00**.

### Conclusion

The landlords' application is partially successful.

The landlords have established a total monetary claim in the amount of \$1,600.00. The landlords have been authorized to retain the tenant's full \$750.00 security deposit in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order for the balance owing by the tenant to the landlord under section 67 of the *Act* in the amount of \$850.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 4, 2019

---

Residential Tenancy Branch