



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 8, 2019. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence via Canada Post Registered Mail on July 10, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?  
Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord stated that this tenancy began on August 1, 2018 on a fixed term until January 30, 2019 and then thereafter on a month-to-month basis. The monthly rent is \$2,500.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,250.00 was paid.

Both parties confirmed that the rental property consists of two units. The tenant's rental unit and the landlord's residential unit.

The landlord seeks a clarified monetary claim of \$2,600.00 which consists of:

\$2,500.00	Unpaid Rent/Loss of Rent, May 2019
\$100.00	Recovery of Filing Fee

The landlord stated that the tenant failed to pay rent for her last month for May 2019 of \$2,500.00. The landlord stated that the tenant gave notice to end the tenancy on April 8, 2019 for May 31, 2019. The landlord claims that the tenant vacated the rental unit on April 28, 2019. The landlord seeks \$2,500.00 for May 2019 and to offset that claim against the \$1,250.00 security deposit held by the landlord and recovery of the \$100.00 filing fee.

The tenant argued that notice to end tenancy was given to the landlord on April 8, 2019 for May 1, 2019 in a letter and that the tenant vacated the rental unit on April 28, 2019 (submitted in evidence package). The tenant further states that a review of an advertisement provided by the landlord shows that the rental unit was "Currently occupied by owner" and as such no loss/unpaid rent since the posting states that the unit is not available until June 1. The tenant further argues that the advertisement was for the landlord's unit as the landlord moved into the rental unit in May 2019.

The landlord argued that the April 8, 2019 letter does not specify a move-out date and as such the tenant is still liable for the loss of rent for May 2019. The landlord confirmed in his direct testimony that at no time has he ever advertised the rental unit after the tenant had vacated it. The landlord confirmed that he occupied the rental unit in June 2019 after perform "renovations". The landlord confirmed that the advertisement was for his own unit and not that of the rental unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay

compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the evidence of both parties that the tenant provided notice to end the tenancy via a letter dated April 8, 2019. However, the landlord has claimed that the tenancy was to end on May 31, 2019 and the tenant has argued that notice was given for May 1, 2019. A review of the submitted letter shows that notice dated April 8, 2019 states in part,

***Accept this as my declaration to end our tenancy agreement. I acknowledge that according to the tenancy act because my notice is after March 31, 2019, I am expected to pay for May's rent. However, as it is only 8 days into April, I expect there will be due diligence on behalf of the landlord to find a tenant for May 1, 2019. I will accommodate any showings.***

In reading this letter, I find that it is unreasonable for the landlord to determine that no end of tenancy date was included. I find that the highlighted portion noted above is clear in its meaning that the landlord must find a new tenant for May 1, 2019 and as such that it is reasonable to infer that the tenant gave notice to end the tenancy for April 30, 2019. This is further proven in the confirmation that the tenant vacated the rental unit on April 29, 2019. As such, I find that notice to end tenancy was given, albeit without the requisite one month's notice.

Residential Tenancy Branch Policy Guideline #4, Duty to Minimize Loss states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), **the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss**. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. **The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.**

**The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.** The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the

plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation<sup>2</sup>. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

**Efforts to minimize the loss must be "reasonable" in the circumstances.** What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

**The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.** The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation...

**The landlord who does not advertise for a new tenant within a reasonable time after the tenant vacates a rental unit or site prior to the expiry of a fixed term lease may not be entitled to claim loss of rent** for the first month of vacancy; however, claims for loss of rent for subsequent months may be successful once efforts to find a new tenant are made.

In this case, it is clear that the landlord did not advertise the rental unit for rent, but instead advertised his own unit as he "occupied" the rental unit to perform "renovations" for his own use. The only advertisement provided by the landlord was for his own unit which he vacated in June 2019. The landlord now resides in the previous rental unit after renovations. I find in the circumstances that the landlord failed to mitigate any possible losses by not making any "reasonable efforts" to re-rent the unit. This is further compounded as the landlord "occupied" the rental unit himself to perform "renovations". As such, I find that not only did the landlord not make any reasonable efforts to re-rent the unit; the landlord had no expectation of rental income for this unit as he "occupied" it himself. The landlord's application is dismissed without leave to reapply.

The landlord having failed to establish a claim for unpaid rent/loss of rental income must return the \$1,250.00 security deposit to the tenant.

### Conclusion

The landlord's application is dismissed.

The tenant is granted a monetary order for \$1,250.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: August 09, 2019

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Residential Tenancy Branch