



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$2,700.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the form of unpaid rent, and to recover the cost of their filing fee.

The tenant, B.V.D. ("Tenant"), the Landlord, and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

This hearing was originally held on June 3, 2019, by a first Arbitrator; however, the Tenants were unable to attend, because a second Arbitrator found that the Landlord did not serve the Tenants with a notification of the proceeding. The second Arbitrator also found that the outcome may have been different if the first Arbitrator had had all of the evidence concerning mitigation before her. The hearing was reconvened before me on August 20, 2019, and both Parties were represented.

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

In the hearing, the Landlord said that the City had changed the name of the road on

which the rental unit is situated, although the unit and address numbers and the postal code are all the same. I changed the address name in this Decision to reflect the Landlord's undisputed comments in this regard.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

#### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to retain the Tenants' security deposit?
- Is the Landlord entitled to recovery of the Application filing fee?

#### Background and Evidence

In the hearing, the Parties agreed that the fixed term tenancy ran from November 1, 2016 to April 30, 2017, with a monthly rent of \$1,350.00, due on the first day of each month. The Parties agreed that the Tenants paid a security deposit of \$675.00, and no pet damage deposit.

In the hearing the Landlord said that in February 2107 that the Tenants told her that they had lost their jobs and would have difficulty paying rent. The Landlord said she told them that they could delay payment until March 6, 2017, if it would help, but that she said she needed to know if they would have difficulty paying her by then.

The Landlord said that the Parties corresponded back and forth, and that the Tenants asked the Landlord if she had someone who could move in sooner than May 1, 2017. The Landlord said she tried, but was unable to arrange to have the next tenant move in sooner than May 1, 2017.

The Landlord said that on March 13, 2017, she received an email from the Tenants saying that they had removed their belongings from the rental unit and that they did not intend to pay any more rent.

The Tenant said that she and her co-tenant did not pay rent in March or April 2017. She said that this was "several years ago and we were both immature, but we tried to get someone into the unit."

The Landlord said that the Tenants owe her \$1,350.00 for March 2017 and \$1,350.00 for April 2017, pursuant to the Parties' fixed term tenancy agreement, for a total of \$2,700.00 in unpaid rent.

### Analysis

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

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

The undisputed evidence before me is that the Parties entered into a fixed term tenancy agreement running from November 1, 2016 to April 30, 2017; however, the tenancy ended when the Tenants abandoned the rental unit in March 2017, without having paid rent beyond the amount owing for February 2017. Sections 44 and 45 of the Act set out how tenancies end and also specifies that tenants must give written notice to the landlord to end the tenancy.

**44** (1) A tenancy ends only if one or more of the following applies:

. . .

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

**45** (2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

There is no provision in the Act that allows a tenant to end a tenancy in the manner in which these Tenants did; further, email is not an accepted method of serving a party

with notice of the end of a tenancy. I am not satisfied that the Tenants ended the tenancy in accordance with the Act or the tenancy agreement. I find that the Tenants vacated the rental unit contrary to sections 44 and 45 of the Act that was in force at that time. Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord suffered a monetary loss of rental income of \$2,700.00.

Policy Guideline #5 outlines a landlord's duty to minimize their loss in this situation. It also sets out that the loss generally begins when the landlord becomes aware that damages are occurring. Additionally, in claims for loss of rental income where the tenants end the tenancy contrary to the Act, the landlord must make reasonable efforts to re-rent the rental unit.

Based on the evidence before me overall, I find that the Tenants did not end the tenancy in accordance with the Act and I am satisfied that the Landlord mitigated her loss by taking steps to re-rent the premises as soon as possible. The Landlord had a new tenant arranged for May 1, 2017, who could not begin the tenancy any earlier. I find it unreasonable to expect that the Landlord would be able to find another tenant for the period of mid-March through to April 30, 2017. In the circumstances, I find that the Landlord mitigated her damages.

Accordingly, I find that the Tenants are responsible for the rental loss that the Landlord suffered. I award the Landlord with an order for compensation of lost rental income from March and April 2017 totalling \$2,700.00.

As the Landlord was successful in this claim, I find the Landlord is entitled to recover the \$100.00 cost of the Application filing fee. I find that pursuant to section 72(2)(b) of the Act, this award may be offset against the Tenants' \$675.00 security deposit in partial satisfaction of the Landlord's monetary claim. After set off, I award the Landlord with of \$2,025.00 of unpaid rent, plus recovery of the \$100.00 Application filing fee, for a total award of **\$2,125.00**.

### Conclusion

The Tenants breached the Act and their fixed term tenancy agreement by ending the tenancy prior to the date specified in the tenancy agreement. The Tenants failed to pay the Landlord the last two months' rent owing on the fixed term tenancy in the amount of \$2,700.00. The Landlord is awarded recovery of the unpaid rent, as well as the \$100.00 Application filing fee.

The Landlord is authorized to retain the Tenants' \$675.00 security deposit as partial satisfaction of this award. The Landlord is awarded **\$2,125.00** in full satisfaction of this Order.

The Landlord provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 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: August 26, 2019

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Residential Tenancy Branch