



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, FFL

### Introduction

On June 5, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Tenants and the Landlords agent (“the Landlord”) attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the 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 a monetary order for unpaid rent?
- Is the Landlord entitled to keep the security deposit towards any unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and tenants testified that the tenancy began on June 1, 2018, as a one-year fixed term tenancy. Rent in the amount of \$1,725.00 was to be paid by the first

day of each month. The Tenants paid the Landlord a security deposit of \$862.50. The Tenants paid the Landlord a deposit of \$150.00 for a garage door remote. The Landlord testified that he is still holding the \$150.00 remote deposit.

The Landlord testified that the Tenants provided written notice to end the tenancy; however, the notice was not proper notice as required by the Act. The Landlord testified that the written notice is dated May 4, 2019, indicating that the Tenants are moving out of the rental unit on May 31, 2019. The Landlord testified that the Tenants moved out of the rental unit on May 31, 2019. The Landlord provided a copy of the notice to end tenancy they received from the Tenants.

The Landlord did not rent the rental unit out for the month of June 2019, and is seeking to recover the loss of June 2019, rent from the Tenants. The Landlord is seeking the amount of \$1,725.00.

The Landlord has applied to keep the security deposit in the amount of \$862.50 in partial satisfaction of his claim for unpaid rent. The Landlord also agreed to keep the \$150.00 remote deposit in partial satisfaction of the claim.

In reply, the Tenants provided testimony confirming that they gave the Landlord late notice to end the tenancy. The Tenants testified that they attempted to assist the Landlord with finding a new Tenant for the rental unit; However, they submit that the Landlord was resisting their efforts. The Tenants testified that the Landlord entered into a tenancy agreement with a new occupant on May 15, 2019 for a tenancy to start on July 1, 2019. The Tenants suggested that the Landlord did not do everything possible to rent the unit out sooner.

### Analysis

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy*

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants ended the tenancy early, not in accordance with

section 45 of the Act which requires notice to be given the day before in the month that rent is to be paid.

The parties had entered into a fixed term tenancy that automatically continues on a month to month basis if it is not renewed. Since the fixed term tenancy period was ending on May 31, 2019, the Tenants were required to give the Landlord proper written notice if they wanted to end the tenancy. On May 4, 2019, the Tenants gave written notice to end the tenancy on May 31, 2019 and they moved out on May 31, 2019. I find that the earliest date that the Tenants could have ended the tenancy is June 30, 2019.

Since the Tenants did not give proper written notice to end the tenancy the Tenants are responsible to pay the rent up to the earliest date that the Tenants could have ended the tenancy.

I find that the Landlord was not able to re-rent the unit for the month of June 2019 and suffered a loss of June 2019 rent. I award the Landlord the amount of \$1,725.00.

I order that the Landlord can keep the security deposit in the amount of \$862.50 in partial satisfaction of the Landlord's award of \$1,725.00.

I order that the \$150.00 door deposit that the Landlord is holding will apply towards the June rent that the Tenants owe the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,825.00 comprised of \$1,725.00 in rent; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$862.50.00 and the \$150.00 remote deposit towards the award of \$1,825.00, I find that the Landlord is entitled to a monetary order in the amount of \$812.50. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

### Conclusion

The Tenants ended the tenancy early and not in accordance with section 45 of the Act.

The Tenants are responsible to pay the rent for June 2019. The Landlord has established a monetary claim in the amount of \$1,825.00. I order that the Landlord can keep the security deposit in the amount of \$862.50 and the remote deposit of \$150.00 in partial satisfaction of the Landlord's award.

I grant the Landlord a monetary order in the amount of \$812.50.

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: September 19, 2019

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Residential Tenancy Branch