



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDCL-S MNRL-S

### **Introduction**

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

- a monetary order for unpaid rent, money owed or compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

AL ('landlords') appeared and testified on behalf of the landlords in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlords' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlords' application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed

At the beginning of the hearing, the landlords' agent confirmed that the utilities bill was paid by the tenants. Accordingly, this portion of the landlords' monetary claim was withdrawn.

### **Issue(s) to be Decided**

Are the landlords entitled to monetary compensation for unpaid rent and losses?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### **Background and Evidence**

This fixed-term tenancy began on September 1, 2018, and was to end on June 30, 2019. Monthly rent was set at \$2,000.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$1,000.00, which they still hold. On April 8, 2019, the tenants gave notice to the landlords that they would be moving out earlier than June 30, 2019. The tenants moved out on May 15, 2019.

The landlords are requesting monetary compensation as follows:

May 2019 Rent for May 16-30, 2019	\$1,000.00
June 2019 Rent	2,000.00
<b>Total Monetary Award Requested</b>	<b>\$3,000.00</b>

It was undisputed by both parties that the tenants had only paid \$1,000.00 in rent for May 2019. The tenants do not dispute that they had moved out before the end of the fixed term tenancy, but are disputing the landlords' monetary claim as they feel that the landlords had failed to mitigate their losses by re-renting the home for the remaining time left in the fixed-term tenancy instead of moving back into the home before July 1, 2019. The tenants felt that the landlords were difficult to communicate with, and had declined their offer to sublet the home for the remaining time in the fixed-term tenancy. The tenants testified that they had moved out early due to the nature of the housing market, and the challenge of securing long-term housing.

AL testified that the tenants had terminated the tenancy near the end of the fixed-term tenancy. AL testified that the landlords had planned to occupy the home as of July 1, 2019 as a long-term plan, and they had chosen to no longer rent out the home on a short or long-term basis anymore as these tenants were to be the last tenants before the landlords settle down into the home as occupants, and end their role as landlords. AL testified that they had expected the tenants to occupy the home until the end of this fixed-term tenancy, and the re-renting of the home for the remaining one and half months would be too challenging given the amount of time required to re-rent the property. The landlords do not dispute that they had started to prepare for the move-in as planned as they home was now vacant.

### **Analysis**

Section 44 of the *Residential Tenancy Act* reads in part as follows:

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

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

*(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**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.*

While the tenants did notify the landlords of the early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out earlier than the date specified in the tenancy agreement, and on a date that was earlier than one month after the date the landlords had received the official, written notice.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. I must now consider whether the landlords are entitled to the loss of rental income for May 2019 and June 2019.

I have considered the testimony of the tenants that the landlords could possibly have mitigated the tenants' exposure to the losses claimed by re-renting the home on a short-term basis for the remaining one and half months of the tenancy. However, I find that

the landlords had provided a reasonable explanation for why the tenants' proposed options did not make sense for this specific scenario. It was undisputed by both parties that the long-term plan was for the landlords to move back into their home as occupants, and that these tenants were the last tenants to reside in this home. Although I sympathize with the tenants that they had made the decision to move-out early due to the difficulty in securing rental housing, I find that their failure to comply with the *Act* had caused the landlords to suffer a monetary loss for the remaining time of this fixed-term tenancy. I find that the landlords had considered their duty to mitigate their losses, but that re-renting the home would be unreasonable and not cost-effective given the time left in the tenancy, and the time required to find new, suitable tenants. I find that the alternate scenario would still mean a monetary loss for the landlords, albeit an indirect one.

Although the landlords have an obligation to mitigate the tenants' exposure to their losses as required by section 7(2) of the *Act*, this obligation is balanced with the landlords' right to screen prospective tenants, and fill the vacancy with suitable tenants. I find the landlord's explanation for why they had chosen to not sublet or re-rent the home on a short-term basis to be reasonable. Accordingly, I find that the landlords are entitled to a monetary order in the amount of \$3,000.00 in satisfaction of the lost rental income due to the tenants' failure to comply with sections 44 and 45 of the *Act*.

As the landlords were successful in their claim, I allow the landlords to recover the filing fee for this application.

The landlords continue to hold the tenants' security deposit of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I issue a Monetary Order in the amount of \$2,100.00 in the landlords' favour as set out in the table below.

May 2019 Rent for May 16-30, 2019	\$1,000.00
June 2019 Rent	2,000.00
Filing Fee	100.00
Less Security Deposit Held	-1,000.00
<b>Total Monetary Award</b>	<b>\$2,100.00</b>

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: September 10, 2019

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Residential Tenancy Branch