



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, MNDCL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

KK, the agent for the landlord, ("the landlord") attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord provided uncontradicted affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on October 18, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on October 23, 2019.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the

tenant with the Notice of Hearing and Application for Dispute Resolution on October 23, 2019.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted testimony as follows as the tenant did not attend the hearing.

The tenancy began on September 1, 2019 and was for a 12-month fixed term which could be extended to 36 months. Rent was \$2,100.00 monthly payable on the first of the month. The landlord submitted a copy of the tenancy agreement which included a requirement the tenant pay a \$100.00 fee on moving in.

The tenant informed the landlord on September 4, 2019 that he intended to move out at the end of September 2019. The tenant moved out September 30, 2019 and did not pay rent for October 2019.

On moving in, the tenant had provided the landlord with a cheque for the security deposit of \$1,050.00 plus a move-in fee of \$100.00. The cheque was returned by the bank marked "payment stopped". The landlord incurred a \$30.00 NSF fee.

The tenant did not reimburse the landlord for the security deposit, move-in fee or banking fee.

The landlord requested a monetary order as follows:

ITEM	AMOUNT
One-half month's rent	\$1,050.00
Move-in fee	\$100.00
Banking fee	\$30.00

Reimbursement filing fee	\$100.00
<b>TOTAL CLAIM</b>	<b>\$1,280.00</b>

The landlord testified that the unit remained vacant until November 1, 2019 and the landlord was unable to find a replacement tenant before then despite reasonable efforts.

### Analysis

Section 45 (2) considers how a tenant ends a fixed term tenancy, stating:

#### **Tenant's notice**

**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.** (emphasis added)

Therefore, the tenant was required to provide notice in this case on or before September 30, 2019 stating the tenant was leaving on October 31, 2019. The tenant did not provide the notice required under section 45(2) and under the Agreement.

Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses:

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

**7 (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)

*Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent* provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.*

The landlord testified to efforts to find a replacement tenant in the month of September 2019. The landlord located a suitable replacement tenant with a new tenancy agreement commencing November 1, 2019

Considering the evidence provided by the landlord, I am satisfied the landlord made reasonable efforts to mitigate loss.

Considering the uncontradicted evidence of the landlord, I find the tenant failed to provide notice as required to end the tenancy as a result of which the landlord has incurred a loss of rent for one month for which he is entitled to a monetary award in the amount claimed of one-half month's rent. The landlord is therefore entitled to a monetary award in the amount of one-half the amount of rent for the month of October 2019. I also find the landlord is entitled to reimbursement of the \$100.00 move-in fee and the \$30.00 banking fee.

As the landlord is successful in the landlord's claim, the landlord is entitled to reimbursement of the filing fee in the amount of \$100.00.

I therefore award the landlord a monetary order in the amount of **\$1,280.00** calculated as follows:

ITEM	AMOUNT
One-half month's rent	\$1,050.00
Move-in fee	\$100.00
Banking fee	\$30.00
Reimbursement filing fee	\$100.00
<b>TOTAL CLAIM</b>	<b>\$1,280.00</b>

Conclusion

I grant a monetary order in the amount of **\$1,280.00**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 25, 2020

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Residential Tenancy Branch