



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant was served with the landlords' application for dispute resolution via registered mail. I find that the tenant was served with the landlords' application for dispute resolution in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 15, 2019 and ended on February 21, 2020. Monthly rent in the amount of \$1,400.00 was payable on the 15<sup>th</sup> day of each month. A security deposit of \$700.00 and a pet damage deposit of \$400.00 were paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. On January 28, 2020 the tenant provided the landlord with notice to end the tenancy effective February 29, 2020. The tenant authorized the landlords to retain her security deposit for ½ of February 2020's rent. The tenant authorized the landlords to retain \$50.00 from her pet damage deposit for the cost of a microwave and a car ride. The landlords returned the remaining pet damage deposit of \$350.00 to the tenant on February 21, 2020.

The landlords testified that the tenancy agreement ran from the 15<sup>th</sup> of each month to the 14<sup>th</sup> of the next month. The landlords testified that the correct effective date of the tenant's notice to end tenancy was March 14, 2020, not February 29, 2020. The landlords testified that they are seeking \$700.00 in rent for March 1-14, 2020. The tenant testified that she thought her tenancy ended at the end of the month, not in the middle of the month.

Both parties agree that the tenant did not pay any rent for March 2020.

### Analysis

While text message is not proper service under the *Act*, I find that the landlords were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenant's notice to end tenancy on January 28, 2020.

Section 45(1) of the *Act* states that a tenant may end a periodic 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, and
- (b) 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.

Section 45(1)(b) of the *Act* states that the effective date of the notice to end tenancy must be the day before the day in the month that rent is due. Both parties agreed that rent was due on the 15<sup>th</sup> day of the month; therefore, the effective date had to be the 14<sup>th</sup>. Section 45(1)(a) of the *Act* states that notice cannot be earlier than one month after the date the landlord receives the notice. February 14, 2020 would not have been one month after the date notice was given; therefore, the correct effective date is the 14<sup>th</sup> day of the following month, March 14, 2020. I find that the earliest move out date that complies with section 45(1) of the *Act*, for a notice to end tenancy served on January 28, 2020, is March 14, 2020.

Residential Tenancy Policy Guideline #5 states that where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

In this case, contrary to section 45 of the *Act*, less than one month's written notice was provided to the landlords to end the tenancy. The earliest date the tenant was permitted to end the tenancy was March 14, 2020. I therefore find that the tenant owes the landlords \$700.00 in unpaid rent.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlords in the amount of \$800.00.

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: April 20, 2020

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Residential Tenancy Branch