



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNRL-S, MNDCL-S

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified that this tenancy began on May 1, 2019 for a fixed term of six months ending on October 31, 2019. The tenants signed another six month fixed term agreement on September 16, 2019 for a tenancy beginning November 1, 2019 to April

30, 2020. Monthly rent in the amount of \$2,600.00 was payable on the first day of each month. A security deposit of \$1300.00 was paid by the tenants and the landlord continues to retain this deposit.

The landlord testified that the tenants gave written notice on September 24, 2019 that they would be moving out on October 31, 2019 and no longer wished to stay. The landlord advised the tenants that they would be enforcing the fixed term agreement and that the tenants would be liable for any loss of income. The landlord testified that they aggressively and regularly advertised the unit on several websites. The landlord attempted to mitigate their losses by lowering the rent by \$250.00 per month. The landlord rented the unit for January 1, 2020. The landlord seeks \$2600.00 for the month of November, \$2600.00 for December, \$50.00 for the late fee and NSF fee for November and the \$100.00 filing fee for a total claim of \$5350.00.

The tenants gave the following testimony. JB testified that they didn't really want to sign a fixed term agreement and felt that the company was pushing him into it. JB testified that he didn't want to be evicted so he signed the agreement. DB testified that they were not aware that there is no longer a vacate clause at the end of the tenancy and didn't realize that the tenancy would continue as a month to month. JB testified that he thought he had met his obligation and that he should get his deposit back.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

### Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from November 1, 2019 to April 30, 2020.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

*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.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, they could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenants vacated the rental unit on October 31, 2019, before the completion of the fixed term on April 30, 2020. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted online rental advertisements on several sites. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. I accept the landlord's evidence that this was a slow rental period, particularly during the winter months. To entice potential tenants, the landlord reduced the rental price by \$250.00 per month. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks two months of rental loss for November and December 2019, the period during which the property could not be re-rented due to the tenant's breach. Accordingly, I find that the landlord is entitled to \$5200.00 for a loss of November and December 2019 rent from the tenants.

I dismiss the landlords claim for the \$50.00 late fee and NSF charge. The landlord was fully aware that the tenants had moved out and attempted to cash their cheque. The landlord was not entitled to cash the cheque as they were not granted an order to recover the loss of rent at that time.

The landlord continues to hold the tenant's security deposit of \$1300.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the Application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4000.00 against the tenant as follows:

Item	Amount
Loss of November 2019 Rent	\$2,600.00
Loss of December 2019 Rent	2,600.00
Less Security Deposit	-1300.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Award</b>	<b>\$4000.00</b>

The landlord is provided with a monetary order in the amount of \$4000.00 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 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 09, 2020

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Residential Tenancy Branch