



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "*Act*"), for a monetary order to recover unpaid rent, for compensation under the *Act*, for compensation for damages, for permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

Both the Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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 monetary compensation for unpaid rent?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties testified that the tenancy began on October 10, 2019, as a one-year fixed term tenancy. Rent in the amount of \$1,300.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$650.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

Both parties also testified that the Tenants issued a notice to end the tenancy on October 20, 2019 and moved out of the rental unit on October 21, 2019. The Landlord submitted a copy of the Tenants' emailed notice to end tenancy into documentary evidence.

Both parties agreed that the move-in and move out inspections had been conducted for this tenancy, in accordance with the *Act*. The Landlord submitted a copy of the move-in/move-out inspection report into documentary evidence.

The Tenants testified that they provided the Landlord with their forwarding address on October 24, 2019. The Landlord submitted a copy of the Tenants' email containing forwarding address into documentary evidence.

The Landlord testified that immediate steps were taken to locate a new renter for the rental unit but that they were unable to secure a new renter to take over the rental unit February 5, 2020. The Landlord is requesting the recovery of the loss in rental income for November 2019, December 2019, January 2020 and the first four days of February 2020, as well as \$70.00 in advertising costs. The Landlord submitted a copy of two invoices for online advertising for the rental unit into documentary evidence.

The Tenants testified that they had left the tenancy early as the tenancy was frustrated due to the condition of the rental unit. The Tenants testified that immediately after moving in their family started to be come ill, complaining of headaches, sleeplessness, and being stuffed up. The Tenants testified that there was a smell of smoke in the rental unit and that they believe there to be mold in the rental unit. The Tenants testified that they did not mention the smell or their illness to the Landlord before giving notice to end their tenancy.

The Landlord testified that the smell the Tenants testified to was not mentioned by them to her during the move-in inspection or at anytime during the ten days that the Tenants occupied the rental unit. The Landlord testified that if there was a problem with the

rental unit the Tenants should have reported it to her and given her a change to fix the problem.

The Tenants also testified that they do not think it should have taken the Landlord three months to secure a new renter for the rental unit. The Tenants testified that they believe at it took the Landlord three months to re-rent due to needed repairs.

Additionally, the Landlord testified that she is requesting \$1067.00 in hydro electricity cost for the remainder of the fixed term of this tenancy, from November 2019 to October 2020. As the Tenants were to cover these costs under the Tenancy agreement.

The Landlord also testified that she is requesting \$40.00 in compensation for Canada Post fees for mailing documents related to these proceedings to the Tenants. The Landlord submitted a copy of a receipt from Canada into documentary evidence.

### Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed upon testimony of these parties that they entered into a one-year fixed term tenancy agreement starting on October 10, 2019 and ending October 1, 2020. I also accept the agreed upon testimony of these parties that the Tenants ended their tenancy early when they moved out of the rental unit on October 21, 2019. Section 45(2) of the *Act* states the following, in relation to ending a fix term tenancy:

#### ***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.*

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement. Therefore, I find that the Tenants breached section 45 of the *Act* when they ended their tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy.

I also accept the Landlord testimony that they were able to secure a new renter for the rental unit as of February 2020. As for the Landlord's request to recover the lost rental income for the months of, November 2019, December 2019 and January 2020. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenants' breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenants' breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the loss of rental income for November 2019, December 2019 and January 2020. I grant the Landlord an award of \$3,900.00, in the recovery of that lost rental income.

However, I decline to award the Landlord the requested recovery of lost rental income, at a per diem rate, for four days period between February 1, 2020 to February 4, 2020.

As for the Landlord claim for \$1,067.00 in the projected cost for hydro electricity bill, for the period between November 2019 to January 2020. As the Tenants did not live in the rental unit between November 2019 to January 2020, I find that they could not have used the hydro electricity during this period and are therefore not responsible for the cost of its use. Accordingly, I dismiss the Landlord claim for \$1,067.00 in the cost for hydro electricity bill, for the period between November 2019 to January 2020.

The Landlord has also claimed for \$70.00 for the recovery of their cost to advertise the rental unit. As it has already been determined that the Tenants' breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord and the requirement for the Landlord to secure a new renter for the rental unit. I find it reasonable that the Landlord would have out of pocket costs to advertise, in order to locate a new renter. However, I find that the Landlord has provided insufficient evidence to prove the value of that loss, as the copies of bills for advertising, submitted into documentary evidence by the Landlord, total \$48.14, not the \$70.00 that has been claimed for in these proceeding. Consequently, I find that the Landlord has established an entitlement to the recovery of their proven advertising cost. I grant the Landlord an award of \$48.14, in the recovery of advertising cost.

The Landlord has also requested permission to retain the Tenants' security deposit. Section 38(1) of the *Act* provides the conditions in which a Landlord may make a claim to retain the security deposit at the end of a tenancy. The *Act* gives a landlord, 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

***Return of security deposit and pet damage deposit***

***38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of***

***(a) the date the tenancy ends, and***

***(b) the date the landlord receives the tenant's forwarding address in writing,***

***the landlord must do one of the following:***

***(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;***

***(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.***

In this case, I find that this tenancy ended on October 21, 2019, the dated the Landlord took back possession of the rental unit. In addition, I accept the testimony of the Tenants and the Landlord that the Tenants provided the Landlord with their forwarding address on October 24, 2019. Accordingly, the Landlord had until November 8, 2019, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlord's application for this hearing, and I find that the Landlord submitted their Application for Dispute resolution to claim against the deposit on November 7, 2019. I find that the Landlord filed their claim against the deposit within the statutory timeline, and in accordance with the *Act*. Accordingly, I find that the Landlord was within their rights to withhold the security deposit for this tenancy pending the results of these proceedings.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

The Landlord has also claimed for compensation for Canada Post fees for costs to mail document related to these proceedings to the Tenants. With the exception of compensation for the filing fee for the Application for Dispute Resolution the *Act* does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process. Therefore, I dismiss the Landlord's claim to recover Canada post fees.

Overall, I find that the Landlord has established an entitlement to a Monetary Order in the amount of \$3,398.14; consisting of \$3,900.00 in the recovery of lost rental income for November 2019, December 2019 and January 2020, \$48.14 in advertising costs, and \$100.00 to recover the filing fee for this hearing, less the \$650.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I grant the Landlord a Monetary Order in the amount of \$3,398.14. The Landlord is provided with this Order 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 8, 2020

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Residential Tenancy Branch