



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON MAX REALTY & PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

On December 16, 2019, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for the unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.J. and W.L attended the hearing as agents for the Landlord. Both Tenants attended the hearing as well. All in attendance provided a solemn affirmation.

S.J. advised that the Landlord served the Tenants with one Notice of Hearing and evidence package by registered mail on December 18, 2019 and the Tenants confirmed that they received this package. Furthermore, they took no position on the Landlord not serving each of them separately. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing and evidence packages.

K.P. advised that they served their evidence to the Landlord by placing it in the mailbox of the Landlord’s office on May 11, 2020. S.J. confirmed that the Landlord received this evidence; however, he only looked at it today. Regardless, he stated that they had reviewed this evidence and were prepared to respond to it. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to apply the security deposit towards the unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2018 and ended when the Tenants gave up vacant possession of the rental unit on December 15, 2019. Rent was established at \$1,350.00 per month and was due on the first day of each month. A security deposit of \$675.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenants provided their forwarding address in writing on the move-out inspection report on December 15, 2019.

S.J. advised that the Tenants gave notice to end their tenancy on November 30, 2019 by email, effective for December 30, 2019. However, they then did not pay rent in the amount of \$1,350.00 for December 2019 rent. Despite the Tenants being responsible for the entire month of rent, the Landlord is simply seeking recovery of the half month of rent that the Tenants occupied the rental unit and would like to claim against the security deposit to offset this loss. The Landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") as documentary evidence. This Notice was served on December 3, 2019 because the Tenants did not have any authority under the *Act* to withhold rent for December 2019. The Tenants did not pay the rent arrears, nor did they dispute the Notice. The effective end date of the tenancy on the Notice was noted as December 19, 2019.

K.P. confirmed that they gave their notice to end their tenancy by email on November 30, 2019 and he made submissions with respect to a septic tank that overflowed where sewage had entered into the rental unit in October 2019. As they were unable to live in the rental unit for a time in November 2019, withholding payment of December 2019 rent was their justification for any compensation that they believed they were owed due

to this repair issue. He confirmed that they had no authority under the *Act* to withhold the rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 45 of the *Act* pertains to how the Tenants are required to end their periodic tenancy. More specifically, it outlines that one, whole month's written notice is required to end the tenancy in accordance with the *Act*, meaning that their notice to end the tenancy given on November 30, 2019 would have been effective for December 30, 2019. This move out date is reflected in their email.

Section 52 of the *Act* outlines the form and content that is required in a notice to be considered a notice to end tenancy that complies with the *Act*. However, as neither party made any submissions with respect to whether or not this email notice complied with the *Act*, I am satisfied that all parties accepted this notice and that the tenancy would end on December 30, 2019.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy and Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Tenants provided the Landlord with their forwarding address in writing on the move-out inspection report on December 15, 2019 and the Landlord made an Application, using this address, to keep the deposit on December 16, 2019. As the Landlord's Application was made within the timeframe to deal with the deposit pursuant to Section 38 of the *Act*, I am satisfied that the Landlord did not breach the requirements of Section 38. Therefore, I find that the doubling provisions of the *Act* do not apply in this instance.

Section 46 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claims for half of December 2019 rent, I am satisfied from the undisputed evidence that the Tenants gave a notice to end their tenancy on November 30, 2019 and that the end date of the tenancy was December 30, 2019, pursuant to the *Act*. As a consequence, the Tenants would be responsible for paying the entire month of December 2019 rent. However, the consistent evidence is that the Tenants did not have authorization under the *Act* to withhold December 2019 rent and they took it upon themselves to arbitrarily decide to withhold this rent to compensate themselves for an amount that they believed reflected a loss that they suffered in November 2019.

As there is no evidence before me to indicate that the Tenants had authorization to withhold December 2019 rent, I am satisfied that the Tenants breached the *Act* by withhold this amount. As a result, I am satisfied that the Landlord has substantiated a loss. However, as the Landlord has elected to seek only compensation in the amount of time that the Tenants occupied the rental unit in December 2019, I grant the Landlord a monetary award in the amount of **\$675.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial

satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

Half of December 2019 rent	\$675.00
Recovery of filing fee	\$100.00
Security deposit	-\$675.00
<b>TOTAL MONETARY AWARD</b>	<b>\$100.00</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$100.00** 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: May 21, 2020

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Residential Tenancy Branch