



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 14, 2020 seeking an order to recover the money for unpaid rent and utilities, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on April 3, 2020. In the conference call hearing I explained the process and provided each party the opportunity to ask questions and provide oral testimony.

The landlord and tenant EM attended the hearing. In the hearing, the tenant in attendance confirmed they were served with the notice of this hearing and the landlord’s evidence, separately, via registered mail.

The landlord confirmed they were served with the tenant’s evidence on March 30, 2020, sent via registered mail.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for recovery of unpaid rent and utilities pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord applied for a monetary order for \$3010.00 in lost rental income for the months of February and March 2020. On their completed monetary order worksheet the landlord states this is “Potential Rent Loss”.

The landlord provided a copy of the tenancy agreement. The tenancy began on March 1, 2019, for a fixed term of 13 months, to end on March 30, 2020. The rent amount was \$1505.00, payable on the 30<sup>th</sup> day of each month. There was a payment of a security deposit in the amount of \$752.50 paid in two separate payments. Two tenants and the landlord signed the agreement on March 1, 2019. The tenant verified this information in the hearing. A one-page addendum is attached, with paragraph 7 stating “Tenant to give one-month notice (prior to start the month) to landlord” to end the tenancy before the agreed end date.

There is one message from the tenant EM to the landlord concerning the end of tenancy. Additionally, there are two messages from the tenant LN to the landlord regarding the end of tenancy. These are:

- From the tenant LN on December 12, 2019, stating “Me and my boyfriend are moving in together, so I would like to give one month notice for moving out.”
- From the tenant EM on January 7 advising they wish to end the tenancy “because of the breach of materials terms and loss of quiet enjoyment”
- From the tenant LN on January 14 stating:  
As I mention on Dec 12<sup>th</sup> 2019 by e-mail and by mutual discussion my end of tenancy is effective on Jan 31<sup>st</sup> 2020 because of the breach of material terms and loss of quiet enjoyment.

In the hearing the tenant mentioned the constant noise, disturbances, and initiating the end of tenancy due loss of quiet enjoyment. The end of tenancy, in their words, was because they “didn’t feel it to be a safe situation to reside for two months.” The tenant mentioned “breach of material terms” throughout the hearing – reiterating the issues of heat, noise, and lack of a separate mailbox.

The landlord addressed the issues of material terms. In their written submission, they stated: “But. . . on January 7<sup>th</sup>. . .and on January 14<sup>th</sup>. . . [the tenants] wrote me tenancy termination letters that both of them are leaving due to breach of material terms and loss of quiet enjoyment.” The landlord also provides that there was a message on December 12, 2019. The landlord also states: “. . . they themselves breached the material terms of lease contract.”

Also: "Since their departure I have been trying to rent out the vacant place through Craigslist and local display facilities with no avail so far."

The written evidence shows the landlord's efforts at posting notices of the available rental unit. These are public postings showing the date of "available March 1 2020" and "available February 1 2020". Similarly, copied craigslist ads show "available February 1" and this bears a notation "posted 26 days ago".

The landlord reduced the rent amount to \$1,400.00. In the landlord's testimony, this is to "attract the good tenants". This was in conjunction with showings of the unit which had some responses, and interviews by the landlord with prospective tenants. The landlord also testified that he talked to friends and people he knows to inform them that the unit was empty. They asked a friend to put it in the marketplace and "had a good response."

The tenant's evidence and testimony show their prior claim for monetary compensation for loss of quiet and enjoyment and the hardship caused by loss of utilities. The previous claim was heard by another Arbitrator on March 12, 2020 with a final decision issued March 19, 2020 granting the tenant compensation for loss of quiet enjoyment; mail delivery; insufficient heat provision; and return of double the security deposit paid. The file number of this claim is listed on the cover page of this decision. The tenant presented that they lost quiet enjoyment due to the landlord's family in the unit above, a breach of material terms because of fridge replacement and heat, and the landlord not fulfilling the obligation to maintain the suite. These are the reasons they ended the tenancy.

A statement of the co-tenant, undated, appears in the tenant's evidence. This lists three items as 'breach of material terms'

The tenant's statement dated March 22, 2020 gives their statement on their notice of end of tenancy: "I, in no way, claim to have not given my notice prior to the predetermined date set in the lease that I signed." The reference here is section 14, paragraph 1 of the tenancy agreement that stipulates "at least one month's written notice" and giving specific requirements of a written notice. The tenant states: "I find the amount of \$3010... a bit ludicrous and unfounded."

A statement of the co-tenant, undated, appears in the tenant's evidence. This lists "a number of issues under a breach of material terms and loss of quiet enjoyment". These are: fridge replacement, lack of heat, noise complaints, lack of separate mailbox, and pest control. This note specifies that they gave the landlord notice to end tenancy on January 7, 2020.

## Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

To examine whether the landlord is entitled to recover the amount for loss of rent, I must determine whether the tenancy ended in compliance with the *Act*. This entails looking at how the tenant ended the tenancy where there was a fixed term tenancy agreement in place.

The stipulations of the tenant giving a notice to end tenancy are in section 45 of the *Act*:

### **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.

(3)If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4)A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*]

I find there are conflicting messages from the tenants regarding the end of tenancy. An earlier message shows one of the tenant's desire to end the tenancy to move in with a partner. Residential Tenancy Policy Guideline 13 outlines the rights and obligations of co-tenants. It states, in part:

A tenant is a person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly

responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

What this means is that when one tenant gives the landlord a notice to end tenancy the other tenant is bound by that notice and must vacate the rental unit on the end date provided in the notice to end tenancy.

The two messages in January refer to breach of material terms; however, they do not specify how the landlord is in breach of the tenancy agreement. For these reasons, I find the reason for end of tenancy is that stated by the tenant LN on December 12, 2019: they intend to move in with a boyfriend. There is no evidence of the tenant identifying a breach of a material term neither at this time of notice, nor at any point prior to this date.

Residential Tenancy Policy Guideline 8, addressing breach of material terms, provides a statement of the policy intent of the legislation. This provides that the tenant must inform the landlord in writing: that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter; and that if the problem is not fixed by a deadline, the party will end the tenancy.

The landlord stated: "Throughout their tenancy, they never ever raised their displeasure in "Quiet Enjoyment and Breach of Material terms". From the evidence, and applying the conditions stipulated in section 45(3), I find as fact that there was not prior *written notice of the failure*, nor was there *an opportunity to correct the situation*, nor was there *a requested date for the correction to occur*.

I find it is the duty of the tenant to identify what material term is being breached. There is no evidence of this, and the issue as such was not identified to the landlord in writing prior to January 7, 2020. With the tenancy set to end on January 31, 2020, raising this as an issue with the landlord – after advising of a different reason for ending the tenancy – is proof the tenant did not end the tenancy in line with the *Act*.

Based on the above, I find the tenants did not end the tenancy in accordance with the *Act*. A notice to end tenancy based on breach of material term, completed in this fashion, does not override the tenants' duties as stated in the tenancy agreement. The tenant did not give proper notice under the Legislation.

I find the tenant ending the tenancy in a manner not in line with the *Act* leaves the terms of the tenancy agreement intact and subject to the *Act*. Specifically, I find the tenants are obligated to pay rent to the end of the fixed term, subject only to the landlord's obligation to mitigate any

losses. The tenants signed a contract that they were going to pay – the obligation to pay rent does not end with the vacancy of the rental unit.

All claims of compensation for damage or loss are subject to that party's doing whatever is possible to minimize the damage or loss. The liability for not complying with the *Act* or a tenancy agreement is found in section 7(2) of the *Act*:

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(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(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.

On this point, and to determine a fair amount of compensation, I find the landlord made prompt efforts to re-rent the unit. The reasons for my finding are based on my assessment of the evidence which shows the actions of the landlord prior to and following the ending of the tenancy.

The written evidence shows the landlord's efforts at posting notices of the available rental unit. I find this shows advertising present in January 2020 –in conjunction with the month-end vacancy.

Similarly, one copied Craigslist ad shows "available February 1" and this bears a notation "posted 26 days ago". I find this indicates an earlier rather than a later notification and effort at publicly advertising the available rental unit. I find it more likely than not the landlord posted this information in December 2019. The advertisement material ties closer into the early timeframe for the landlord to push forward with advertising and finding new tenants.

Moreover, the landlord reduced the rent amount to \$1,400.00. This in and of itself represents a monetary loss, but more prevalent in the landlord's evidence I find it represents further efforts by the landlord to minimize loss.

In all, I find the evidence shows the landlord's efforts are reasonable, undertaken in a timely fashion in order to minimize the monetary loss. This is in the circumstances where the tenants breached the tenancy agreement by ending the tenancy earlier than the agreement allows.

For the reasons above, the landlords shall receive compensation for the total amount claimed on their amended worksheet dated February 28, 2020. That amount is \$3,010.00.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the landlord was successful in their claim, I find they are entitled to recover the filing fee from the tenants.

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$3,110.00 for unpaid rent and a recovery of the filing fee for this hearing application. The landlords are 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 *Act*.

Dated: May 7, 2020

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Residential Tenancy Branch