



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

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

The Tenants testified that they had not received the Landlord’s documentary evidence. The Landlord testified that they could not remember if they had sent their documentary evidence to the Tenants. As the service of the Landlord’s documentary evidence cannot be verified, I find it appropriate that the Landlord’s documentary evidence I is not consider in my final decision.

I have reviewed all oral and written evidence 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 damages under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

### Background and Evidence

Both parties agreed that the tenancy began on October 23, 2019 (approximately). Rent in the amount of \$1,400.00 was payable on the first day of each month, and the Tenants had paid a security deposit of \$700.00 at the outset of this tenancy.

Both the parties also agreed that the Landlord and one of the Tenants to this tenancy agreement signed a mutual agreement to end this tenancy on November 19, 2019. The parties also agreed that the agreement listed an effective end of tenancy date of November 19, 2019.

The Landlord testified that they gave the Tenants until November 30, 2019, to finish moving out of the rental unit and confirmed that the rent had been paid, by the Tenants, for the full month of November 2019. The parties agreed that the Tenants moved out of the rental unit as of November 22, 2019.

The Landlord testified that they are claiming to retain the security deposit for this tenancy, due to the loss of rental income for December 2019.

The Tenants testified that they should not be responsible for the December 2019 rent as they signed a mutual agreement with the Landlord to end the tenancy as of November 2019.

### Analysis

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

I accept the agreed-upon testimony of these parties that one of the Tenant's to this tenancy and the Landlord signed a mutual agreement to end this tenancy on November 19, 2020, with an effective date of that same day. Section 44 of the *Act* sets how a tenancy may legally end, stating the following:

#### ***How a tenancy ends***

**44 (1)** *A tenancy ends only if one or more of the following applies:*

*(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*

*(i) section 45 [tenant's notice];*

- (i.1) section 45.1 [tenant's notice: family violence or long-term care];*
- (ii) section 46 [landlord's notice: non-payment of rent];*
- (iii) section 47 [landlord's notice: cause];*
- (iv) section 48 [landlord's notice: end of employment];*
- (v) section 49 [landlord's notice: landlord's use of property];*
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
- (vii) section 50 [tenant may end tenancy early];*
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
- (c) the landlord and tenant agree in writing to end the tenancy;*
- (d) the tenant vacates or abandons the rental unit;*
- (e) the tenancy agreement is frustrated;*
- (f) the director orders that the tenancy is ended;*
- (g) the tenancy agreement is a sublease agreement.*

Pursuant to section 44 (1C), I find that this tenancy legally ended, in accordance with the Act, on November 19, 2019, the date agreed to by these parties, in their signed mutual agreement.

I accept the agreed-upon testimony of these parties the Tenant's move-out in accordance with the mutual agreed three days later on November 22, 2019. I also accept the Landlord's testimony that the Tenants had paid the full rent for November 2019.

The Landlord is claiming to retain the security deposit for this tenancy, as compensation for their loss of rental income for December 2019. 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 order to be awarded compensation an applicant must first prove that their has bee a breach of the Act by the Respondent, in this case, that would be the Landlord whom need to prove that the Tenants breached the *Act* during this tenancy.

In this case, I find that the parties to this dispute willing entered into a legally binding mutual agreement to end this tenancy, as permitted under section 44 (1C) of the Act. I also find that the Tenants complied with that agreement and moved out of the rental unit as of November 22, 2019.

I have reviewed the Landlord’s entire application and testimony, and I find that there is no evidence before me to show that the Tenants breach the *Act* during this tenancy. In the absence of a breach of the *Act*, I find that the Landlord is not entitled to compensation under this *Act*. Therefore, I dismiss the Landlord’s claim for the recovery of the loss of rental income for December 2019.

As it has been determined that the Landlord is not entitled to the recovery of the loss of rental income for December 2019, I must dismiss the Landlord’s claim to retain the security deposit for this tenancy.

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 not been successful in their application, I find that they are not entitled to the recovery of their filing fee for this application.

I order the Landlord to return the security deposit that they are holding, in the amount of \$700.00, for this tenancy to the Tenants within 15 days of receiving this decision.

If the Landlord fails to return the security deposit to the Tenants as ordered, the Tenants may file for a hearing with this office to recover their security deposit for this tenancy. The Tenants are also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

### Conclusion

The Landlord's application is dismissed, without leave to reapply.

I order the Landlord to return the Tenants' security deposits to the Tenants within 15 days of receiving this decision.

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 8, 2020

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Residential Tenancy Branch