



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for unpaid rent for the Landlord in the amount of \$1,100.00, retaining the security and pet damage deposits to apply to this claim; and to recover the \$100.00 cost of his Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with his Application, Notice of Hearing and documentary evidence by Canada Post registered mail, sent on December 8, 2019. The Landlord said he sent these documents to a forwarding address provided by the Tenant. The Landlord did not have the tracking number with him during the hearing, but he said when he checked it, he discovered that the package had been delivered to the forwarding address. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the

opportunity to provide his evidence orally and to respond to my questions I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord provided the Parties’ email addresses in his Application documents, and he confirmed his understanding that the Decision would be emailed to both Parties, and any Orders would be sent to the appropriate Party.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Landlord submitted a copy of the Parties’ tenancy agreement and confirmed the following details of the tenancy. The fixed term tenancy began on December 15, 2017, and was to run to May 31, 2018; it then operated on a month-to-month basis. The Tenant paid the Landlord a monthly rent of \$1,100.00, due on the first day of each month, and she paid him a security deposit of \$550.00 and a pet damage deposit of \$550.00.

The Landlord said that on November 11, 2019, the Tenant advised him via a text message that she would be moving out of the rental unit. The Landlord said the Tenant told him she would be moving out in November 2019. The Landlord said he advised her that she had not given proper notice to end the tenancy, and he provided her with the appropriate sections of the Act.

The Landlord said that the Tenant moved out on November 15, 2019. He said that her mother taped an envelope to the Landlord’s door with the Tenant’s forwarding address, which was her mother’s address in a nearby city.

The Landlord said that the Tenant did not pay any rent for December 2019, and that he

had applied for dispute resolution in order to recover this unpaid rent owed to him by the Tenant.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Pursuant to section 26 of the Act.

Section 45 of the Act sets out how a tenant may end a tenancy.

#### **Tenant's notice**

**45** (1) A tenant may end a periodic 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, and

(b) 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.

...

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

This would mean that the Tenant’s notice to end the tenancy should have been effective December 31, 2019, not November 30, 2019.

Further, section 52 states that in order to be effective, a notice to end a tenancy must be in writing and must:

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice, and

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

...

In this case, I find that the Tenant's text message of her intent to end the tenancy was inconsistent with section 52 of the Act. I find that the Tenant abandoned the rental unit, as the circumstances are such that the tenant could not reasonably be expected to return to the residential property. This is consistent with the definition of "abandonment" in section 24 of the Residential Tenancy Act Regulation.

Based on the evidence and authorities before me, I find that the Landlord is successful in his Application, as I find that the Tenant breached sections 26, 45, and 52 of the Act by the way she ended the tenancy and by not paying the rent owing to the Landlord in December 2019. Accordingly, I grant the Landlord a monetary award of \$1,100.00 in unpaid rent, pursuant to section 67 of the Act. I also award the Landlord recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security and pet damage deposits in partial satisfaction of the Landlord's monetary award. The Landlord is authorized to retain the Tenant's security and pet damage deposits, and he is awarded a Monetary Order in the amount of \$100.00 against the Tenant for recovery of the remaining amount of the award.

### Conclusion

The Landlord's Application for recovery of unpaid rent is successful in the amount of \$1,100.00. Further, the Landlord is awarded recovery of the \$100.00 filing fee for this Application from the Tenant.

The Landlord is authorized to keep the Tenant's security and pet damage deposits of \$1,100.00 in partial satisfaction of the Landlord's monetary award. I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant in the amount of **\$100.00** for the remainder of the monetary award owing by the Tenant to the Landlord.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential