



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "female landlord" did not attend this hearing, which lasted approximately 22 minutes. The male landlord ("landlord") and the tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to represent the female landlord at this hearing (collectively "landlords"). The tenant's wife was observing the hearing with the tenant.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application and the landlords were duly served with the tenant's evidence.

The landlord confirmed that although he received the tenant's evidence late, only 5 days before this hearing, he had no objection and he was ready to proceed with the hearing. The tenant confirmed that he was ready to proceed with the hearing with no objections.

### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the tenant's security deposit?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began in October 2018 and ended on December 28, 2019. The tenant provided notice to vacate to the landlords on December 5, 2019. Monthly rent of \$1,150.00 was payable on the first day of each month. A security deposit of \$575.00 was paid and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement.

The landlord testified that the landlords were seeking a monetary order of \$1,150.00, to retain the tenant's security deposit of \$575.00 towards the monetary order, and to recover the \$100.00 application filing fee. The landlords seek January 2020 rent of \$1,150.00 from the tenant. The landlord said that he was unable to re-rent the unit until February 1, 2020 because it was more difficult to rent in the winter months. He maintained that the tenant gave less than 30 days' notice on December 5, 2019, to vacate the rental unit on December 28, 2019. He claimed that he immediately advertised the rental unit for re-rental online on December 5, 2019 and he verbally told the landlady in the building about it.

The tenant disputes the landlords' application. He said that he vacated the rental unit because his son was sick. He claimed that there was mold in the unit. He stated that he helped the landlords find a new tenant. He confirmed that his new landlord, for the place he moved to, told him not to give notice to the landlords of moving out until a new unit was confirmed for him, since there was only one unit available to rent. He agreed that he gave notice to vacate on December 5, 2019 to move out on December 28, 2019.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Section 45(1) of the *Act* states the following:

*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.*

On a balance of probabilities and for the reasons stated below, I award the landlords \$575.00 of the \$1,150.00 sought for January 2020 rent.

Since the parties were in a periodic month-to-month tenancy, the tenant was required to give one month's notice to the landlords to vacate the rental unit. Both parties agreed that the tenant provided less than one month's notice to the landlords on December 5, 2019 to vacate on December 28, 2019.

Therefore, I find that the tenant breached section 45(1) of the *Act* and he is responsible to compensate the landlords for a loss of rent. I accept the landlord's testimony that the landlords suffered a loss of rent because they were unable to find a new tenant to rent the unit until February 1, 2020.

However, I find that the landlords failed to provide sufficient documentary evidence including copies of rent advertisements, to show when they advertised the unit for re-rental, what details were given, or how long the unit was advertised for. The landlords also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. I find that the landlords failed to show how they properly mitigated losses in their efforts to re-rent the unit. Therefore, I find that the landlords are only entitled to half the cost of rent for January 2020 of \$575.00 rather than the \$1,150.00 sought.

The landlords continue to hold the tenant's security deposit of \$575.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security deposit of \$575.00 in full satisfaction of the monetary award.

As the landlords were only partially successful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I order the landlords to retain the tenant's entire security deposit of \$575.00 in full satisfaction of the monetary award.

The remainder of the landlords' application is dismissed without leave to reapply.

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: June 01, 2020

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Residential Tenancy Branch