



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDCL-S

### **Introduction**

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

- and a monetary order for money owed or compensation for loss or money owed the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The landlord was represented by their agent, LA, in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with copies of the landlord's Application and written evidence. As the tenant's evidentiary materials were not served to the landlord in accordance with the *Act*, the tenant's evidentiary materials were excluded for the purposes of this hearing. The tenant was given the opportunity to present sworn testimony and make submissions in response to the landlord's application.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary order applied for?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

Both parties entered into a fixed term tenancy that was to begin on January 1, 2020, and end on January 31, 2021. Monthly rent was set at \$1,875.00, payable on the first of

every month. The landlord collected a security and pet damage deposit in the amount of \$937.50 for each deposit, which they still hold. It was undisputed by both parties that the tenant never moved in, and formally ended the tenancy on January 9, 2020 without paying the January 2020 rent. The tenant provided the landlord with her forwarding address on January 9, 2020.

The landlord is seeking a monetary order for loss of rental income for January and February 2020 due to the early end of this tenancy. The landlord testified that they were able to mitigate their losses, and re-rent the home for March 15, 2020.

The tenant is disputing the landlord's monetary claim for loss of rental income. The tenant testified that the landlord had failed to prepare the home for occupancy by properly cleaning the rental unit and performing repairs before the tenancy was to begin. The tenant testified that the rental unit was vacant, and the landlord had ample opportunity to prepare the home for the move-in.

The landlord responded that the tenant was given the keys early, on December 21, 2019, to accommodate the tenant and give the tenant time to prepare for the move. The landlord testified that they had changed the locks as requested by the tenant. The landlord testified that due to the fact that the move-in took place at end of the year during the holiday season, contractors were not readily available.

### **Analysis**

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**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:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**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.*

While the tenant provided reasons for why she ended this tenancy early, she did not end it in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy or to address the tenant's issues about this tenancy. No applications for dispute resolution have been filed by the tenant in regard to this tenancy. The tenant ended the tenancy within the first month of the 12 month term.

Although I sympathize with the tenant that her expectations for this tenancy were not met, I find that the tenant's decision to end this tenancy was not done in compliance with the *Act*.

I am satisfied that the landlord made an effort to mitigate the tenant's exposure to the landlord's monetary loss for the remainder of this term by advertising the home and re-renting the home as soon as possible, as is required by section 7(2) of the *Act*. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$3,750.00 in satisfaction of the lost rental income due to the tenant's failure to comply with sections 44 and 45 of the *Act*.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit plus applicable interest in satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

### **Conclusion**

I issue a Monetary Order in the amount of \$1,975.00 in the landlord's favour under the following terms which allows the landlord to retain the security deposit in satisfaction of the landlord's monetary claim:

<b>Item</b>	<b>Amount</b>
Monetary Claim for Lost Rental Income due to tenant's failure to comply with sections 44 and 45 of the <i>Act</i>	\$3,750.00
Filing Fee	100.00
Security Deposit & Pet Damage Deposit	-1,875.00
<b>Total Monetary Order</b>	<b>\$1,975.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: June 17, 2020

---

Residential Tenancy Branch