



# Dispute Resolution Services

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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* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenants. The landlord submitted documentary evidence that the tenants were served notice of this application and this hearing by registered mail on January 20, 2020. Canada Post tracking information was submitted in the landlord's evidence. Based on the submissions of the landlord, I find the tenants were deemed served notice of this proceeding on January 25, 2020 pursuant to section 90 of the *Act*. Therefore, I continued in the absence of the tenants.

### Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

The landlord's undisputed testimony is as follows. The one year fixed term tenancy began on March 1, 2019 but ended early on January 5, 2020. The tenants were obligated to pay \$1585.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$775.00 security deposit which the landlord still holds.

The landlord testified that the tenants moved out without any notice on January 5, 2020. The landlord testified that he only became aware of it when a neighbour called to let him the tenants were moving. The landlord testified that the tenants did not pay the rent for January 2020. The landlord testified that he immediately started advertising the unit on craigslist but due to the short notice and the global pandemic he was not able to rent the suite again until March 1, 2020. The landlord is seeking the loss of revenue for January and February, and the recovery of the \$100.00 filing fee for a total claim of \$3270.00.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Loss of revenue for January and February 2020:

Section 45 of the *Act* addresses this issue as follows.

### **Tenant's notice**

- 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.

Based on the documentation before me, I find that the tenant did not provide the appropriate and sufficient notice as required under section 45 and therefore is in breach of that section and the agreement with the landlord. I further find that the landlord acted in accordance with section 7(2) of the Act to mitigate their losses by immediately posting an advertisement and making all reasonable efforts to re-rent the unit. I find that the landlord is entitled to the unpaid rent for January and the loss of revenue for February.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

### Conclusion

The landlord has established a claim for \$3270.00. I order that the landlord retain the \$775.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$2495.00. This order may be filed in the Small Claims 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 08, 2020

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Residential Tenancy Branch