



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Midtown Club Suites  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant, the landlord's residential leasing manager and the landlord's property manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The property manager testified that the tenant was served with the landlord's application for dispute resolution via registered mail on June 15, 2020. The tenant testified that he received the landlord's application for dispute resolution on June 22, 2020. I find that the tenant was served in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 1, 2019 and ended on May 31, 2020. This was originally a fixed term tenancy set to end on May 31, 2020. Monthly rent in the amount of \$1,375.00 was payable on the first day of each month. A security deposit of \$687.50 and a pet damage deposit of \$687.50 were paid by the tenant to the landlord. At the end of the tenancy the pet damage deposit was returned to the tenant, the security deposit was retained by the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The property manager testified that the tenant gave notice to end tenancy via email on May 6, 2020, effective May 31, 2020. The May 6, 2020 email was entered into evidence and states:

I, [tenant at subject rental property], will be moving out as of May 31<sup>st</sup> at 1:00PM. I acknowledge that I am a bit short of a calendar month notice, therefore if no renter can be found for June, I will be responsible for payment for the month.

The property manager read the above email aloud during the hearing, the tenant did not dispute that he sent the above e-mail.

Both parties agree that the tenant provided the landlord with his forwarding address in writing on the move out condition inspection report which was completed on May 31, 2020. The landlord filed this application for dispute resolution on June 9, 2020, nine days after the tenancy ended.

The property manager testified that the subject rental property was marketed for rent as soon as the tenant provided his May 6, 2020 notice to end tenancy; however, a new tenant was not found for June 1, 2020, but was found for July 1, 2020. The property manager testified that the landlord is seeking to recover June 2020's rent from the tenant in the amount of \$1,375.00.

The tenant testified that the landlord did not give him any indication that a renter was not found for June 1, 2020 and that the landlord led him to believe that a renter was found for June 1, 2020 because the move out condition inspection report was completed on May 31, 2020 and the landlord took the keys on that date. The tenant testified that had the landlord informed him that a tenant could not be found for June 1, 2020 he would have stayed the extra month and paid the rent.

The property manager testified that the tenant lined up the move out condition inspection date, not the landlord.

The residential leasing manager testified that during the move out condition inspection she informed the tenant that the landlord found a new tenant for July 1, 2020 but was unable to find a tenant to move in in June 2020.

### Analysis

Section 45(2) of the *Act* states:

(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.

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

The property manager testified that the subject rental property was advertised for rent as soon as the tenant gave his notice to end tenancy. Subsequently, the unit was rented out for July 1, 2020. I find that the landlord mitigated its damages by promptly advertising the subject rental property for rent.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

The tenant breached section 45(2)(a) of the *Act* by giving less than one month's notice to end tenancy. Pursuant to section 7 of the *Act* and Policy Guideline #16, the tenant is responsible for the landlord's lost rental income for the month of June 2020 in the amount of \$1,375.00. The landlord is not required to offer the tenant the opportunity to live in the subject rental property after the effective date of a notice to end tenancy, even if a new tenant cannot be immediately found. I also note that the May 6, 2020 email states that the tenant would pay June 2020's rent if a new tenant was not found, it did not state that the notice to end tenancy was conditional on a new tenant being found for June 1, 2020.

### Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$687.50.

As the landlord was successful in its application for dispute resolution, I find that it is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
June loss of rental income	\$1,375.00
Filing Fee	\$100.00
Less security deposit	-\$687.50
<b>TOTAL</b>	<b>\$787.50</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: July 21, 2020

---

Residential Tenancy Branch