



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord testified each tenant was served with the notice of hearing documents, her evidence and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by email on April 1, 2020.

Normally, service by email is not an accepted method of service allowed for under the *Act*. However, in response to the Covid 19 State of Emergency the Executive Director of the Residential Tenancy Branch issued a Director's Order dated March 30, 2020 allowing for the service of hearing documents by email.

The order allows for documents to be emailed to the email address that the person to whom the document is to be given or served has routinely been used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

The landlord confirmed in her testimony that she had used the email addresses for the tenants during the tenancy to correspond regarding tenancy matters. In support of this testimony the landlord has submitted evidence regarding the merits of her claims against the tenants that included the use of email to correspond with both tenants during and after the tenancy had ended.

Based on the undisputed and credible testimony and documentary evidence submitted by the landlord, I find that both tenants have been sufficiently served with the documents pursuant to the *Act* and the Director's Order dated March 30, 2020. I find the tenants are deemed to have received these documents on April 4, 2020.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to to a monetary order for lost revenue; for reimbursement of costs associated with re-renting the rental unit; for all

or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by both parties on August 27, 2019 for a one-year fixed term tenancy beginning on September 1, 2019, for a monthly rent of \$1,800.00 due on the 1<sup>st</sup> of each month with a security deposit of \$900.00 paid. The landlord confirmed in the hearing she still holds the security deposit.

The landlord testified that while the current tenancy agreement began on September 1, 2019 the tenants actually moved into the rental unit a year previous by virtue of a previous one-year fixed term tenancy agreement that was scheduled to end August 31, 2019.

The landlord testified that on January 18, 2020 the tenants contacted her and asked to meet. In the meeting the tenants informed her that they intended to look for alternate accommodation in another community closer to their work. She stated that on January 20, 2020 the tenants informed the landlord that she would be receiving a call for a reference check from a new potential landlord.

The landlord went on to say she later heard from the female tenant who told her verbally that the tenants would be moving out by the end of January 2020 and that they would no longer be paying the rent effective February 1, 2020. She also stated that on January 21, 2020 she received a text message from the male tenant confirming their intent to end the tenancy earlier than the end date for the fixed term.

The landlord testified that that she began to advertise the rental unit's availability on January 31, 2020 and the tenants did pay rent for the month of February 2020. The landlord acknowledged that she advertised the rental unit for the monthly rent of \$2,000.00 but that the tenants she secured could only move into the unit on March 15, 2020 and that they agreed on a rent of \$1,700.00 per month.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

| With respect to the claim for lost rent revenue of \$900.00, Section 45 (2) of the *Act* stipulates that 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.

I also note Section 45(3) allows that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me that the tenants had provided the landlord with a notice of any breach of a material term of the tenancy, I find the earliest the tenants could have ended the tenancy was at the end of the fixed term, August 31, 2020. As such, I find the tenants are responsible for the payment of rent for the duration of the fixed term subject only to the landlord's obligation to mitigate her losses.

Based on the undisputed credible testimony of the landlord I find the landlord took reasonable steps to mitigate her loss by beginning to advertise the availability of the rental unit by January 31, 2020. Despite her initially setting the rent she sought at \$2,000.00 I accept the fact that she settled on a new tenancy agreement with new tenants for a monthly rent of \$1,700.00 as a continued reasonable effort.

As a result, I find the landlord has established that the tenants breached the *Act* and their tenancy agreement; that the landlord has established that she suffered a loss as a result of that violation; that she has established the value of that loss and that she took reasonable steps to mitigate the loss as claimed.

Therefore, I find the landlord is entitled to her claim as made in the amount of \$900.00 for lost revenue and as she was successful in her claim, I grant that she is entitled to recover the filing fee for this Application.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,000.00** comprised of \$900.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$900.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$100.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 07, 2020

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Residential Tenancy Branch