



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCL-S, MNRL-S, FFL**

### **Introduction**

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

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served the Notice of Dispute Resolution Proceedings package by email on April 19, 2020 at 11:54 a.m. at the email address given to him on the tenant's tenancy application. The email address provided is the tenant's full name @gmail.com. In accordance with the director's order dated March 30, 2020 allowing service by email, I find the tenant to be deemed served with the Notice of Dispute Resolution Proceedings package pursuant to section 72 of the Act.

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

Is the landlord entitled to the monetary orders he seeks?  
Can the landlord recover the filing fee?

### Background and Evidence

The landlord gave the following undisputed testimony. He and the tenant signed a tenancy agreement on March 5, 2020 for a fixed one year tenancy to begin on April 1, 2020, ending on March 31, 2021. A copy of the tenancy agreement was provided as evidence. Rent was set at \$2,900.00 per month payable on the first day of each month. At the commencement of the tenancy, the landlord collected a security deposit of \$1,450.00 which he continues to hold.

On March 27, 2020, the tenant emailed the landlord advising he would not take occupancy of the rental unit. The tenant apologized in his email stating he needed to terminate the tenancy. The landlord returned the email advising the tenant had to pay rent for April 2020. The last time he had contact with the tenant was an email from the tenant on March 30, 2020.

The landlord tried to re-rent the unit since being notified the original tenant was not going to move in. He's advertised on various websites seeking new tenants, taken prospective tenants to the unit for viewings and driven to and from the rental unit to do so. Finally, a new tenant was found willing to rent the unit, however that tenant would only accept a tenancy with rent set lower than the one the respondent/tenant was supposed to pay. That tenancy began on July 15, 2020, so the landlord seeks to recover missed rent from April 1, 2020 to July 15, 2020. During the hearing, the landlord sought to amend his application to increase his claim for the months of May, June and half of July 2020.

The landlord also seeks to be compensated for his multiple trips to the rental unit to show prospective tenants and gas mileage. The landlord seeks \$120.00.

### Analysis

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. Section 64(3) allows the director to amend an application or permit an application to be amended.

In the case before me, the landlord testified that he did not file or serve an amendment to his Application for Dispute Resolution Proceedings although he had the opportunity to

do so before the hearing. I find that the tenant could not reasonably anticipate that the landlord would seek compensation beyond the one month (April, 2020) rent originally sought on his Application for Dispute Resolution since the tenant was unaware how long the rental unit remained vacant. For this reason, I decline to allow the landlord's oral application to amend his Application for Dispute Resolution. The landlord is at liberty to file an additional Application for Dispute Resolution seeking those additional months of lost rent.

Section 16 of the Residential Tenancy Act states:

**Start of rights and obligations under tenancy agreement**

*16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

I find that the parties entered into a tenancy agreement on March 27, 2020 when the landlord and tenant signed the tenancy agreement and the landlord collected the security deposit.

Section 1 of the *Residential Tenancy Act* defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date.

**Neither party may end a fixed term tenancy early**, except under specific circumstances: for cause, by agreement of both parties, or an Early Termination for Family Violence or Long-Term Care.

The landlord gave undisputed testimony that the tenant ended a fixed term tenancy before the end date specified on the tenancy agreement of March 31, 2021.

Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] provides guidance in situations where a tenant has breached a tenancy agreement or abandoned a rental unit. (excerpts below)

*Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:*

- 1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;*
- 2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.*

...

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. **As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.** (emphasis added)*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.*

Further, Residential Tenancy Policy Guideline PG-5 [Duty to Minimize Loss] provides guidance to landlords and tenants regarding ending fixed term tenancies.

### **Loss of Rental Income**

*When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:*

- 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and*
- 2. re-rent the unit as soon as possible.*

*For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.*

*If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.*

### **PROOF OF EFFORT TO MINIMIZE DAMAGE OR LOSS**

*The person claiming compensation has the burden of proving they minimized the damage or loss.*

*If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied.*

The landlord gave undisputed testimony that he marketed the rental unit on various rental websites in an attempt to re-rent the unit. He testified he made multiple trips to the unit to show it to prospective tenants during the time it remained vacant. Lastly, the landlord gave undisputed testimony that he was able to re-rent the unit at a discounted rate, mitigating the losses the original tenant would have to suffer by leaving it unrented for a longer period.

Based on the foregoing, I am satisfied the landlord took reasonable steps to be rent the unit. The landlord is awarded rent for the month of April 2020 as applied for in his Application for Dispute Resolution. Pursuant to section 67, the landlord is awarded \$2,900.00. The landlord has leave to file another application if seeking to recover any compensation for additional unpaid rent.

The landlord seeks to recover compensation for time spent looking for another tenant and gas mileage. A landlord's business is to derive income from rental units by keeping the units occupied. As with most businesses, there are costs associated with running the business. A landlord should expect that from time to time they will have to attend the rental unit to keep it filled. Accordingly, the time and cost incurred to travel to the rental unit I find to be a cost of doing business and I dismiss the portion of the landlord's claim seeking to recover these costs.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$1,450.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

#### Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$1,550.00**.

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 25, 2020