



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **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 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 landlord attended the hearing and the tenant was represented at the hearing by his agent/mother, SF ("tenant"). As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

### Preliminary Issue

At the commencement of the hearing, the tenant advised me that the issue of the return of the security deposit was previously arbitrated and two decisions had been rendered by arbitrators of the Residential Tenancy Branch. With the permission of the parties, I read the previous decisions, the file numbers are referenced on the cover page of this decision. I determined that on April 3, 2020, the tenant was awarded his security deposit of \$325.00 returned, doubled to \$650.00. As such, the issue of return of the security deposit cannot be relitigated pursuant to the principle of *res judicata*.

The principle of *res judicata* prevents an applicant from pursuing a claim that already has been decided and also prevents a respondent from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.

Issue(s) to be Decided

Is the landlord entitled to recover compensation for being served a notice to end tenancy with less than the required days notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The month to month tenancy began on February 1, 2019. Rent of \$650.00 per month was payable on the first day of each month.

On June 6, 2019, the tenant called the landlord, advising he was going to end the tenancy on June 22, 2019. The landlord told the tenant he requires written notice to end the tenancy. A copy of the written notice was provided as evidence. It reads:

*I [tenant] do formally declare my intent to move out of my suite at [address] and seek new lodging elsewhere. This is my last month of living at [address]. I am leaving. I have no intent to rent after June 22, 2019. Signed [tenant] the 6<sup>th</sup> day of June 2019.*

The landlord testified that the tenant told him he was going to Norway to travel in Europe.

The tenant gave the following testimony. The landlord told the tenant he could move out by June 22<sup>nd</sup>. The reason this date was chosen was so that the landlord could get painters in and cleaners in. He wanted to re-rent the unit for the beginning of July. The landlord told him this was sufficient notice and he doesn't need a full months notice. The tenant testified that all these agreements were done verbally, there is no written account of this version of events.

The tenant acknowledges there was a family trip planned for the end of June 2019 but setting June 22<sup>nd</sup> as the end date for the notice to end tenancy wasn't because of the trip. It was agreed to because the landlord wanted that date for painting and cleaning.

### Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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.

Pursuant to section 1 of the Act, "**periodic tenancy**" means

(a) a tenancy on a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with this Act.

Section 45 of the Act states:

#### **Tenant's notice**

**45** (1) A tenant may end a periodic 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, and
- (b) 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.

In this case, rent is payable on the first day of the month. In order for the tenant to give the landlord a notice to end the tenancy that complies with section 45(1)(b) of the Act that ends in June, the tenant must provide the landlord with that notice before the end of May. He did not, as the notice was given on June 6<sup>th</sup>.

Although the tenant argued that the landlord verbally agreed the tenant could end the tenancy on June 22<sup>nd</sup> by giving notice on June 6<sup>th</sup>, based on a balance of probabilities, I find this argument does not stand up to the test of reasonableness. A landlord who

agrees to such a term forgoes his right to claim compensation for a month's rent from the tenant for breaching the Act. I find the landlord succeeded in proving the facts occurred as claimed by him. I am not satisfied by the tenant's argument that the landlord agreed to the tenant giving him short notice. The landlord has proven the tenant violated section 45 of the Act by not giving him a notice that complies with that section and because of this breach, the landlord is entitled to compensation.

Rule 6.2 of the Act limits the landlord's claim to the matters claimed on the application and as such, the landlord's claim is limited to the \$325.00 he claimed. The landlord is awarded \$325.00 pursuant to section 67 of the Act.

The landlord is also entitled to recover the \$100.00 filing fee as his claim was successful.

#### Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$425.00**.

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 31, 2020

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Residential Tenancy Branch