



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenants confirm that their email address as set out in the Landlord’s application is correct.

### Issue(s) to be Decided

Are the Landlords entitled to the monetary amounts claimed?

Are the Landlords entitled to retain the security deposit?

Are the Landlords entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on August 1, 2019 to end July 31, 2020. At the outset of the tenancy the Landlord collected \$1,100.00 as a security deposit. On March 1, 2020 the Tenants gave the Landlord notice to end the tenancy for April 30, 2020 by email followed on

March 5, 2020 by letter. The Landlord received the letter on March 9, 2020. The Tenants moved out of the unit on April 29, 2020. During the tenancy rent of \$2,200.00 was payable on the first day of each month. On or about May 5, 2020 the Landlord received the Tenants' forwarding address.

The Tenant provides a copy of two emails from the Landlord dated March 4, 2020. The first email asks for formal correspondence for their notice and the second email acknowledges receipt of their notice sent on March 1, 2020. This email notes as follows: "Of course I received your email as gmail is a reliable source of communication. I just read it after I sent my email to you." (reproduced as written). The Tenant also provides details of issues that arose during the tenancy and submits that the Landlord either ignored the issues or fixed items after they became a disaster.

The Landlord states that on March 13, 2020 it hired a property manager (the "Agent") to obtain new tenants and that on March 14, 2020 the Agent advertised the unit on its own website. The Landlord does not know the dates that the Agent later placed advertisements on two other online sites. The Landlord states that the unit was advertised as available May 1, 2020 for the same rent. The Landlord did not provide copies of the advertisements. The Landlord states that a new tenant was found on May 15, 2020 for a June 15, 2020 tenancy move-in date. The Landlord states that these new tenants had to give a month's notice to their previous landlord. The Landlord states that before the pandemic they were able to re-rent their unit within one month, that in 24 years as a landlord they have never lost more than the equivalent of one month's rent, and that due to the pandemic there was a slower demand and the number of callers was low. The Landlord the Landlord claims \$5,500.00.

The Landlord states that the Agent was obtained only for the purposes of renting the unit and that the Landlord otherwise manages the rental itself. The Landlord states they are claiming the Agent's costs as the Landlords are residing out of country. The Landlord states that had the Landlord been in the country at the time, they would have

made the effort to list the unit. The Landlord argues that the Tenants are responsible for this cost as they broke the lease and knew that the Landlord was living out of country. The Landlord claims the Agent's cost of \$2,200.00.

The Tenant states that it regularly checked both the Agent's website and the other websites and that the unit was not advertised on these sites until March 19, 2020. The Tenant states that they sent multiple emails to the Landlord about needing to advertise the unit early and not wait for an agent. The Tenant states that it offered to place the advertisements and that on March 7, 2020 the Landlord sent the Tenant a draft advertisement for the rental along with an open house on the upcoming weekend. The Tenant states that the Landlord then stopped this advertisement preparation, informing the Tenants that they would be using an agent for the re-rental. The Tenant states that after the Agent was hired the Tenants sent this person more emails and was informed by the Agent that the unit was advertised on March 19, 2020. The Tenant states that they are not responsible for the Landlord's losses caused by the pandemic.

The Tenant states that after the Agent was hired this person never came to the unit, did not take photos or attended for showings with prospective renters. The Tenant states that they did the showings to prospective renters with as little as 2 hours notice. The Tenant states that they made a video of the unit for the purpose of advertising and the Agent refused the video. The Tenant states that when they spoke to prospective tenants, they informed the Tenants that the Agent was asking them for 4 dates for the showings and delayed the showings. The Tenant argues that it is not responsible for the cost of the Agent that was only obtained due to the Landlord's special circumstances of living out of country. The Tenant argues that the Landlord did not act immediately and that the Agent made no effort to advertise and was not responsive to the Tenant's questions or supportive of the Tenants about showing the unit during the pandemic. The Landlord states that the Agent informed the Landlord that it was doing or planned to do showings of the unit.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Based on the undisputed evidence of the Tenants ending the fixed term tenancy before the end of the fixed term I find that the Landlord has substantiated that the Tenants breached the tenancy agreement.

However, in terms of the Landlord requirement to take reasonable steps to minimize the loss from that breach, I consider that although the Tenants initially only sent their notice to end tenancy by email, the Landlord confirmed receipt of this email through what the Landlord considered reliable communication. On this evidence I find that the Landlord knew on March 1, 2020 of the Tenants' breach of the tenancy agreement and I consider that it would have been reasonable that at this point for the Landlord to initiate steps to minimize its losses.

Given the undisputed evidence that the Landlord prepared an advertisement before the hiring of the Agent, I consider that the Landlord's residence out of country was not an impediment to advertising the unit. Given the Tenant's evidence that the unit was not advertised until March 19, 2020 and as the Landlord did not provide any direct or supporting evidence of when or where the unit was advertised, I find on a balance of probabilities that the Landlord did not act to mitigate its losses until that date. Given the Tenants' evidence of no advertising on any site other than the Agent's site and without any supporting evidence of advertising on any other site I find on a balance of probabilities that the Landlord has not substantiated advertising on any site other than the Agent's site. I do not consider this to be sufficient advertising action in the best of circumstances. Given the Landlord's evidence that under normal circumstances the unit would likely have been rented within a month, I find that the pandemic was an intervening cause of the rental loss. I also note that at the time of the Tenants giving

their notice, there were no restrictions on rentals or human contact as the pandemic was not declared until March 18, 2020 and rentals were not affected until the Emergency Program Act issued March 30, 2020. Further there is no way to determine the proportionate losses arising from the Tenants' early notice from the effects of the pandemic on market demand. Overall however, I consider that the Landlord could have acted sooner than March 19, 2020 to advertise the unit and for this reason I find that the Landlord failed to take reasonable steps to minimize its losses and I dismiss the claim

Given the Landlord's evidence that it obtained an Agent to act for them as they were out of country, I find that the Landlord has not substantiated that the Agent was required as a result of the Tenants' breach of the fixed term. Further there is no evidence of anything existing in the tenancy agreement or Act that requires the Tenants to assume agency costs on behalf of the Landlord for any reason. I also consider the Tenant's evidence that despite the Agent being hired, the Tenants carried out a portion of the Landlord's obligations by showing the unit. For these reasons, I find that the Landlord has not substantiated that the Landlord is entitled to the costs of hiring an Agent and I dismiss this claim.

As the Landlord's claims have not been successful, I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety. I order the Landlord to forthwith return the security deposit plus zero interest of \$1,100.00.

### Conclusion

The application for dispute resolution is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,100.00**. If necessary, 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 Act.

Dated: September 22, 2020

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Residential Tenancy Branch