



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Allison Apartments Inc  
and [tenant name suppressed to protect privacy]

## **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 Landlord confirms that the second named Landlord is named in the application as a Party to the dispute. The Tenants confirm that their email addresses as set out in the Landlord’s application are correct.

### Preliminary Matter

Tenant MM states that the Landlord reversed its first and last name on the application. The Landlord accepts this evidence and asks that the application be amended to set out the correct order of Tenant MM’s names. The Tenant has no objection to this amendment. Given the Tenant’s consent to the Landlord’s agreement I amend the application to set out the correct order of Tenant MM’s names.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: the tenancy under written agreement started on September 1, 2018 on a fixed term to end August 31, 2019. Rent under this agreement was \$2,800.00 payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,400.00 as a security deposit. At the end of the fixed term the Tenants informed the Landlord that they wished to continue renting the unit, so the Landlord sent the Tenants another fixed term tenancy agreement for the period September 1, 2019 to end August 31, 2020 with rent at \$2,856.00. The Landlord informed the Tenants that the rental increase was in line with the allowed rent increase under the Act. The Landlord did not inform the Tenants that the tenancy could have gone into a month to month tenancy and the Tenants did not seek information of their rights at the end of the first fixed term. The Tenants were not given any notice of rent increase since they agreed to the rental increase in the terms of the new tenancy agreement. On April 13, 2020 the Tenants gave notice to end the tenancy for April 30, 2020 however as one of the Tenants was unable to move, they were given more time and rent was paid in full for May 2020. The last of the Tenants moved out of the unit on May 7, 2020. The Tenants do not dispute the Landlord's claim of **\$303.45** for left behind furnishings and **\$25.00** for the cost of a key replacement.

The Landlord states that it does not know if a move-in inspection occurred. The Tenants state that no move-in inspection was done. The Parties mutually conducted a move-out inspection with a completed report signed by and copied to the Tenants.

The Landlord claims unpaid rent for June, July and August 2020 rent of \$8,568.00. The Landlord states that on May 7, 2020 the Landlord advertised the unit on one on-line site with rent of \$2,500.00 to start and then increasing to \$2,700.00 on a lease starting either August or September 1, 2020. The Landlord states that no new tenants were found from this advertisement so on June 15, 2020 the Landlord placed another advertisement for the unit with monthly rent of \$2,200.00. The Landlord states that a

new tenant was found for a fixed term tenancy starting September 1, 2020 with rent of \$2,300.00. The Landlord states that prior to the pandemic they were filling empty units as soon as they were vacant but that since the pandemic, they still have empty units to fill.

The Tenants state that in March 2020 they attempted to find a sublet for the unit but could not as the rental rate was too high. The Tenants argue that the Landlord did not take reasonable steps to mitigate the losses arising from the early end of the tenancy as the Landlord failed to advertise the unit as soon as they gave their notice to end the tenancy. The Tenants state that as this unit is used by students with semester end dates of April 27, 2020 and that students would be looking for rental units in April 2020.

The Landlord argues that the Tenants never informed the Landlord that they were looking for sublets and that the Tenants never approached the Landlord for a rental discount for a sublet. The Landlord argues that the Tenants should have found a sublet for April or May 2020. The Landlord does not know why the unit was not advertised upon receipt of the notice to end tenancy in April 2020. The Landlord also states that there is a better opportunity for new tenancies where advertisements are made within the first week of any month.

### 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. Given the undisputed evidence that the Tenants ended the tenancy prior to the fixed term end date I find that the Landlord has substantiated that the Tenants breached the tenancy agreement. However, the Landlord's evidence is that the unit was not advertised for nearly a month after it

received the Tenant's notice. This evidence supports that the Landlord did not take reasonable steps to reduce the losses being claimed. Further the Landlord's evidence is that the market demand for rentals was reduced as a result of the pandemic. The Tenant cannot be held responsible for losses incurred as a result of a reduced market demand. The evidence of reduced market demand also tends to support the Tenant's evidence that the unit was priced too high for the market at the time it was looking for sublets. While the Landlord's evidence is that the Tenants never informed the Landlord of the lack of demand for their sublet goals due to the high price, this is evidence of actions taken by the Tenants prior to giving their notice to end tenancy and not evidence of the Landlord's obligation to take reasonable steps after the receipt of a notice to end the tenancy. Further it is not up to the Tenants to keep the Landlord informed of market demand and I consider that a reduced demand was reasonably foreseeable by the Landlord at the time the notice was given as the state of emergency caused by the pandemic was already in place. The Landlord's evidence supports that the Landlord was aware of the pandemic and there is no evidence that the Landlord could not have foreseen a reduced market demand as a result of the pandemic. For these reasons I find that the Landlord has not substantiated that the Tenants caused the lost rental income as a result of ending the tenancy early and I dismiss the claim.

As the Tenants have not disputed the Landlord's claims for losses incurred for furniture removal and the key replacement, I find that the Landlord has substantiated an entitlement to **\$303.45** and **\$25.00**. As the Landlord's application has met with limited success, I find that the Landlord is only entitled to recovery of half the filing fee in the amount of **\$50.00** for a total entitlement of **\$378.45**. Deducting this amount from the security deposit plus zero interest of **\$1,400.00** leaves **\$1,021.55** to be returned to the Tenants forthwith.

### Conclusion

I Order the Landlord to retain **\$378.45** from the security deposit plus interest of \$1,400.00 in full satisfaction of the claim.

I grant the Tenants an order under Section 67 of the Act for **\$1,021.55**. 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 9, 2020

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Residential Tenancy Branch