



# 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

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 67 of the Act;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67 of the Act;
- an authorization to retain the tenants' security deposit under Section 38 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

The landlord and tenants AM, AL, EM, NP and SD attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Tenant AL (the tenant) took the lead in representing the tenants during the hearing.

### Service of documents

The landlord affirmed the application and the evidence package were sent to the tenants in June by email and a second evidence package was sent on August 24, 2020 by email. The landlord could not specify which day in June the first evidence package was sent. The tenant confirmed receipt of the application and the evidence package on August 24, 2020 by email and the tenants had time to review them.

The parties offered conflicting testimony regarding the June evidence package. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As the landlord did not provide a copy of the June email and was not able to specify the date the email was sent, the landlord has not substantiated service of the June evidence package.

I find the tenants were sufficiently served the application and the August 24, 2020 evidence package in accordance with section 71(2)(a) of the Act. All the other evidence submitted by the landlord is not accepted.

The tenant affirmed their evidence was submitted to the landlord in three packages by email on August 23, 24 and 27, 2020. The landlord confirmed receipt. Based on both parties testimonies, I find that the landlord was sufficiently served with the tenants' evidence in accordance with section 71(2)(a) of the Act and accept all the tenants' evidence.

#### Preliminary Issue – amending the application

At the outset of the hearing the landlord explained she is also seeking compensation for loss of rental income for the months of June, July and August 2020, in addition to compensation for damages caused by the tenants.

Rule of Procedure 4.2 states:

##### 4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the amendment sought by the landlord to receive compensation for loss or rental income could not be reasonably anticipated by the tenants and the landlord had to submit an amendment to the dispute pursuant to Rule of Procedure 4.6. Thus, the landlord's amendment is not accepted.

#### Issues to be Decided

Is the landlord entitled to:

- a monetary order for unpaid rent?
- a monetary order for compensation for losses caused by the tenants?
- an authorization to recover the filing fee for this application

#### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out

below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the fixed term tenancy started in October 2019 and was supposed to end on May 28, 2020. Monthly rent in the amount of \$10,250.00 was due on the 28<sup>th</sup> day of the month. At the outset of the tenancy a security deposit of \$5,000.00 was collected by the landlord. A one-page blurred copy of a written tenancy agreement was submitted into evidence.

The landlord affirmed when the tenancy started the house was clean, the carpet was shampooed and there were no holes in the walls. The tenants disputed this information and stated the general sanitation of the rental unit was not good when the tenancy started, there were holes in the walls and the painting was not in good conditions. There was no move in or move out inspection.

On May 11, 2020 the landlord received a hand-written letter (submitted into evidence) dated May 03, 2020 giving notice to end tenancy. On May 28, 2020 the landlord affirmed the tenants were not in the rental unit, but their belongings (including sport equipment) were there. The rental unit was very dirty, with food abandoned and garbage not removed. Fourteen photographs were submitted into evidence showing the rental unit's condition on May 28, 2020 with several belongings of the tenants, food, garbage and sporting equipment. The carpet had to be removed, a large amount of garbage had to be transported to the landfill, a toilet was broken, bathroom tiles and the stove were dirty. The tenants removed their belongings by June 08, 2020. The landlord did not offer an opportunity for a move out inspection.

The landlord said she needed to hire a contractor to clean the rental unit, as well as repair damages caused by the tenants. As no contractor was found in the rental unit's city, the landlord hired a contractor in another city and had to pay for his travel time. An invoice for the total amount of \$5,852.11 for the contractor's work was submitted into evidence. This invoice lists expenses for painting, travel time and toilet repair. The landlord affirmed \$2,500.00 of the invoice submitted into evidence was for cleaning.

The tenant affirmed all the occupants left the rental unit and the tenancy ended by May 28, 2020, there was no move out inspection and the rental unit was messy and needed to be further cleaned when the tenancy ended. The tenant also affirmed the co-tenants are responsible for the unsatisfactory cleaning condition of the house when the tenancy ended.

The landlord's application claims compensation for unpaid rent due on April 28<sup>th</sup> and May 28<sup>th</sup>, however, during the hearing the landlord explained rent due in April 2020 was paid. The landlord stated the tenants verbally authorized her to apply the \$5,000.00 security deposit to previous rental arrears that were due between October 2019 and March 2020.

The tenant affirmed there was a verbal authorization for the landlord to retain \$3,000.00 from the security deposit for previous rental arrears that were due between October 2019 and March 2020. The tenants did not receive the balance of the security deposit and did not provide the landlord with their forwarding addresses in writing, only an email address for an electronic payment.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### Unpaid rent

Sections 44 and 45 of the Act state:

#### **44 How a tenancy ends**

**(1) A tenancy ends only if one or more of the following applies:**

**(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:**

(i) section 45 [tenant's notice];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

**(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;**

**(c) the landlord and tenant agree in writing to end the tenancy;**

**(d) the tenant vacates or abandons the rental unit;**

**(e) the tenancy agreement is frustrated;**

**(f) the director orders that the tenancy is ended;**

**(g) the tenancy agreement is a sublease agreement.**

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

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

(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.

(2)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.

The parties offered conflicting testimony regarding the end of the tenancy. As previously explained in this decision, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on the facts that the landlord did not provide any documentary evidence that the tenants continued to occupy the rental unit after May 28, 2020, the landlord did not state when exactly the tenancy ended, both parties agreed the fixed term tenancy was supposed to end on that date and the tenant's testimony that they vacated the rental unit by May 28, 2020, I find the tenants vacated the rental unit and the tenancy ended on May 28, 2020, pursuant to section 44(1)(b). Furthermore, there is no evidence the tenancy was supposed to continue as a periodic after the end of the fixed term period.

As the tenancy ended and the tenants vacated the rental unit on May 28, 2020, the tenants did not have to pay rent on May 28, 2020. Thus, I dismiss the landlord's application for rent payment due on May 28, 2020.

## Compensation for losses

Sections 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Residential Tenancy Branch Policy Guideline 01 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused,

either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set put in the Residential Tenancy Act.

Based on the undisputed testimony, photographs and receipt, I find the tenants did not leave the rental unit reasonably clean and undamaged except for regular wear and tear.

The invoice submitted into evidence does not indicate how much the cleaning services cost. Although the landlord affirmed \$2,500.00 was the cost of the cleaning, based on the photographs provided, I find reasonable to award the landlord \$1,900.00 for the cleaning expenses. As such, I award the landlord \$1,900.00 in compensation for this loss.

### Security deposit

Section 38 of the Act states:

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
  - (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,the landlord must do one of the following:
  - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The email address provided for electronic payment is not in accordance with the requirement of section 38 (1)(b) of the Act.

The landlord affirmed the tenants verbally authorized her to retain the \$5,000.00 security deposit. The tenants affirmed the landlord was authorized to retain only \$3,000.00. As previously explained in this decision, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

As the landlord did not provide any documentary evidence that the tenants authorized her to retain the \$5,000.00 security deposit, based on the testimony provided I find the tenants only authorized the landlord to retain \$3,000.00.

Filing fee and set-off

As the landlord was partially successful in this application, the landlord is entitled to recover the \$100.0 filing fee.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when the landlord holds the security deposit:

2. The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the \$2,000.00 security deposit balance to offset the monetary award for losses incurred due to the tenants' non-compliance with the Act.

In summary:

Item	Amount \$
Cleaning	1,900.00
Filing fee	100.00
Subtotal	2,000.00
Minus security deposit	-2,000.00
<b>Total monetary award</b>	<b>0</b>

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary compensation in the amount of \$2,000.00. Pursuant to section 38 of the Act, I authorize the landlord to retain the balance of the security deposit in the amount of \$2,000.00 to fully compensate the losses incurred by the tenants' non-compliance with the Act.

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: September 01, 2020

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Residential Tenancy Branch