



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

The landlord filed an Application for Dispute Resolution on May 14, 2020 seeking an order to recover monetary loss of unpaid rent. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on September 14, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing. The tenants did not attend and did not provide documentary evidence prior to this hearing.

In the hearing, the landlord confirmed they delivered notice of this hearing and their prepared evidence to each of the tenants on May 18, 2020. They stated the tracking number entry for Canada Post showed the registered mail was delivered to each tenant. Their packages of registered mail included their prepared documentary evidence in this matter.

In consideration of the evidence presented by the landlord, and with consideration to section 89 of the *Act*, I find the tenants were sufficiently served with notice of this hearing, as well as the landlord’s evidence.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 38 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms. The tenants and landlord signed the agreement on June 20, 2017. The tenancy started on October 1, 2017 for a fixed term ending on September 30, 2018 and continued as a month-to-month tenancy after that. The monthly rent at the start of the tenancy was \$2,800.00 per month. The tenants paid a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00.

The landlord provided copy of a notice advising the tenants of a rent increase for January 1, 2020. The monthly rent increased to \$2,987.71.

Approximately May 18, 2020, the tenants advised the landlord they were not able to afford the rent. They moved out on May 26<sup>th</sup>, then advised the landlord of that later, via email. The landlord stated there was no communication from the tenants after that.

The landlord claims the full amount of May rent, for \$2,987.71. In the hearing, they stated they did not rent the unit for the following month of June 2020. They amended their application in the hearing to include the month of June 2020.

They request to apply the full amount of deposits, for \$2,800.00.

The tenants did not attend the hearing and did not provide documentary evidence prior to the hearing date.

### Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount and the amount of the deposits paid. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* section 45 sets out how a tenant may end a tenancy:

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, the evidence of the landlord is that the tenant breached the tenancy agreement by abruptly ending the tenancy on May 26, 2020. They advised the landlord that they moved out after they had done so. Under the *Act*, the tenant was not entitled to give notice to end the tenancy for an effective date that was earlier than one month after the landlord received the notice.

I find a remedy is in order where the tenant breached the *Act*. I allow the landlord's amendment of their application to include the following month rent amount. I award a replacement of the full rent for the next month of June because the tenant gave incorrect notice to end the tenancy. This award for damages is an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. This is the loss of rent up to the earliest time the tenant could legally have ended the tenancy at the end of June 2020, the next full month of rent as claimed by the landlord.

I accept the evidence before me that the tenants failed to pay the rent for May 2020. They did not provide a proper end-of-tenancy date to the landlord. I find the landlord is entitled to the whole of May and June rent, for the total \$5,975.42.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$5,975.42. After setting off the security deposit amount of \$2,800.00, there is a balance of \$3,175.42. I am authorizing the landlord to keep the security deposit amount and award the balance of \$3,175.42 as compensation for rent owing.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,275.42. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants fail

to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 16, 2020

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Residential Tenancy Branch