



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S MNDCL FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$1,368.40 for unpaid rent or utilities, to retain the tenant's security deposit towards any amount owing, for money owed under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they received the landlord's documentary evidence and had an opportunity to review that evidence prior to the hearing. The tenant confirmed that they did not serve documentary evidence in response to the landlord's application. I find the tenant was sufficiently served in accordance with the Act as a result.

### Preliminary and Procedural Matters

At the outset of the hearing the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties.

In addition, during the hearing, the landlord requested to withdraw their claim for \$18.40 in additional cable channels. As a result, I do not grant leave to reapply for that portion of the landlord's claim as Residential Tenancy Branch (RTB) Rules of Procedure

(Rules) Rule 2.9 states that a claim cannot be divided.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 1, 2019 and was scheduled to revert to a month to month tenancy after February 29, 2020. Monthly rent was \$1,250.00 per month and was due on the first day of each month. The parties agreed that the security deposit has already been dealt with in a previous hearing in response to a tenant application under the Act. As a result, I will not address the security deposit in this decision.

The landlord's monetary claim of \$1,350.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of March 2020 rent	\$1,2500.00
2. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,350.00</b>

The landlord testified that the tenant texted the landlord on January 29<sup>th</sup> or 30<sup>th</sup> of 2020 by stating they would be vacating at the end of February and about one week later, texted back to say they changed their mind and then 2-4 days after that, stated that they would be leaving on the next available flight. The parties agreed that the tenant vacated the rental unit between February 16<sup>th</sup>-18<sup>th</sup>, 2020 and returned the keys.

The landlord testified that the tenant was not given permission verbally or in writing to end the tenancy earlier than the fixed-term date. The landlord stated after the first text was received, they began to search for a new tenant, and a friend of the family was going to rent the rental unit; however, changed their mind after the tenant changed their mind about staying in the rental unit. The landlord testified that after the tenant vacated the rental unit, the landlord was able to find a new tenant for April 1, 2020 and is seeking loss of March 2020 rent as a result, plus the filing fee.

The tenant confirmed that there was no written agreement between the parties to end the fixed-term tenancy early and the landlord denied telling the tenant that they found a new tenant to rent the rental unit. The landlord stated that while they intended for the family friend to rent after the tenant vacated, that changed when the tenant changed their mind and stayed, which ultimately was changed again when the tenant moved out February 16<sup>th</sup>-18<sup>th</sup> of 2020.

### Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Section 45(2) of the Act applies and states:

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

**45(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.

[Emphasis added]

As the tenant vacated the rental unit before February 29, 2020, which is the earliest the tenancy would have reverted to a month to month tenancy, I find the tenant breached section 45(2)(b) of the Act and owes the landlord March 2020 loss of rent. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$1,250.00** for loss of March 2020 rent.

As the landlord's claim is successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act. Therefore, I find the landlord has established a total monetary claim of **\$1,350.00**.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord in the amount of \$1,350.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

**I caution** the tenant not to breach section 45(2) of the Act in the future.

Conclusion

The landlord's claim is successful.

The landlord has established a total monetary claim of \$1,350.00. The landlord is granted a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord in the amount of \$1,350.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant has been cautioned as noted above.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2020

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Residential Tenancy Branch