



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDCL-S

### Introduction

On August 16, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*.

The Landlord and both Tenants attended the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on or around August 17, 2020 and the Tenants confirmed receipt of this package. Based on this solemnly affirmed, undisputed testimony, I am satisfied that the Tenants have been served the Notice of Hearing and evidence packages.

The Tenants advised that they did not submit any evidence for consideration on this file.

In reviewing the Landlord’s Application, she requested monetary compensation in the details of her dispute for lost rent due to the fixed term tenancy ending early. However, the Application was only a request for \$2,250.00 and the Application was not amended to reflect the total amount of rental loss that she suffered. However, she advised that she was not seeking the entirety of the rental loss. As such, the Landlord’s Application will only address monetary claims for compensation in the amount of \$2,250.00.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2019 as a fixed term tenancy for one year; however, the Tenants never moved into the rental unit. Rent was established at \$1,500.00 per month and was due on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord stated that the Tenants never provided their forwarding address in writing. However, she called the Tenants in August 2020 and received their new address over the phone.

Tenant C.D. confirmed that she gave the Landlord their new address over the phone in August 2020. Tenant J.S. confirmed that they never gave the Landlord or the Landlord's property manager their forwarding address in writing. He may have provided this to the property manager via text, but he is not sure, and he has no proof of doing so.

All parties agreed that the Landlord returned the Tenants' pet damage deposit on or around December 2019.

The Landlord is seeking compensation in the amount of **\$2,250.00** for October 2019 rent and half of November 2019 rent because the Tenants signed a fixed term tenancy ending on September 30, 2020. However, they did not give any notice to end their tenancy early and never moved into the rental unit. She stated that they did not pay October 2019 rent and her property manager called them in the first week of October 2019 to ask for the rental arrears. It was at this point that they informed the property manager that they would be ending their tenancy.

She submitted that her property manager worked hard to re-rent the unit and immediately advertised the rental unit in an attempt to re-rent the property. There were

approximately half a dozen prospective tenants, but there were no qualified applicants. As a suitable replacement tenant could not be found, the Landlord moved back into the rental unit in mid-December 2019. Even though she could claim for the rental loss until this point, she was only seeking the above compensation.

J.S. advised that they had intended to move into the rental unit as they were desperate to find a home in the area. They agreed to rent this one as it was the only one in the area. However, they found a different unit that was more suitable, so they rented that one as well. He stated that they were not comfortable renting a unit with the Landlord living in the backyard.

G.D. advised that they moved from a five-bedroom house and they had too much stuff to fit into the rental unit. As well, their son was too tall to live in the rental unit. She stated that the rental unit was dirty when they viewed it.

J.S. stated that when he talked to the property manager about ending the tenancy, she told him that she would be able to re-rent the unit for November 1, 2019. Furthermore, there are few available rental units in the area so the Landlord should not have had difficulty renting the unit.

The Landlord advised that the tenants that could have rented the unit for November 1, 2019 had already found new places to rent by that point.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Tenants never provided a forwarding address in writing to the Landlord. As such, the Landlord was not obligated under the *Act* to do anything with the deposits. Despite this, the Landlord returned the pet damage deposit in full in December 2019. As the Tenants never provided the Landlord with a forwarding address in writing, I am satisfied that the doubling provisions do not apply to the deposits.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed term tenancy agreement for a year starting on October 1, 2019, yet the tenancy effectively ended because the Tenants never moved in and gave up vacant possession of the rental unit. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

Based on the undisputed evidence, the Tenants never provided any written notice to end their tenancy and only informed the property manager verbally after not paying October 2019 rent and then being called by her because of it. I do not find that the Tenants ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord could have suffered a rental loss. In addition, I am also not satisfied that the

Tenants gave the Landlord sufficient notification that they were ending the tenancy and vacating the rental unit. Given that the Landlord only discovered that it was the Tenants' intention to break the fixed term tenancy in the first week of the first month of the tenancy, I am satisfied that the Landlord was given little notice to start advertising to re-rent the unit.

As the Landlord had been given minimal notification that the Tenants would be giving up vacant possession, I am satisfied that the Landlord was put in a position that it would have been impossible to rent the unit to recoup October 2019 rental loss, and it would have been difficult for her to re-rent the unit even for November 1, 2019. I am satisfied by the evidence presented that she made sufficient attempts to re-rent the unit as quickly as possible after finding out that the Tenants would not be occupying the rental unit.

Given that the Tenants signed a tenancy agreement binding them to the terms of that agreement, I find their justification for not fulfilling their obligations are wholly unacceptable reasons for validly ending this tenancy without consequences. They elected to sign this agreement of their own volition, and if it was not suitable for their needs, then there was nothing forcing them to agree to rent this unit. Furthermore, the fact that they did not pay the first month's rent, and only informed the Landlord that they would not be moving in when the property manager reached out to them a week into the tenancy regarding the late rent, is a clear indication, in my view, that the Tenants made it infinitely more difficult for the Landlord to mitigate her losses as soon as possible. As a result, this only increased the likelihood that they would be responsible for the rental loss that the Landlord suffered.

Consequently, I am satisfied that the Tenants are responsible for the rental loss that the Landlord is seeking compensation for. As such, I grant the Landlord a Monetary Order in the amount of **\$2,250.00**.

Pursuant to Sections 38 and 67 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

October 2019 rental loss	\$1,500.00
Partial November 2019 rental loss	\$750.00
Security deposit	-\$750.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,500.00</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,500.00** 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 *Residential Tenancy Act*.

Dated: September 25, 2020

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Residential Tenancy Branch