



## Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

### **DECISION**

Dispute Codes      MNRL-S, FFL

#### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Recovery of the filing fee; and
- Retention of the Tenant's security deposit.

The hearing was convened by telephone conference call and was attended by two agents for the Landlord G.M. and T.E. (the Agents), both of whom provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Agents testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the Landlord's documentary evidence, was sent to the Tenant by registered mail on June 17, 2020, at the forwarding address provided by the Tenant on April 30, 2020. The Agents provided me with the registered mail tracking number and a printout from the Canada Post website confirming that the registered mail was sent on June 17, 2020, and delivered to a community or condo mailbox on June 29, 2020.

Although section 90(a) of the Act states that registered mail is deemed received 5 days after it is mailed, unless earlier received, as the mail was not even delivered to the mailbox until June 29, 2020, 12 days after it was mailed, I find section 90(d) of the Act

more appropriate. As a result, I find that the Tenant was deemed served with the above noted documents in accordance with the Act and the Rules of Procedure on July 2, 2020, three days after they were delivered to their mailbox. As a result of the above, and pursuant to rule 7.3 of the Rules of Procedure, the hearing therefore proceeded as scheduled, despite the absence of the Tenant or an agent acting on their behalf.

Although, I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Agents, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application.

#### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain the Tenant's security deposit?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on November 26, 2018, and became month to month at the end of the fixed term on November 30, 2019. Although the tenancy agreement states that rent in the amount of \$1,470.00 is due on the first day of each month, the Agents confirmed in the hearing that rent in the amount of \$1,558.00 was due each month at the time the tenancy ended. The tenancy agreement also states that a \$735.00 security deposit was to be paid, which the Agents confirmed was paid and is still held by the Landlord.

The Agents stated that although a mutual agreement to end tenancy effective May 31, 2020, was entered into, proof of which was submitted for my consideration, the Tenant gave notice on April 29, 2020, to end the tenancy early effective April 30, 2020. As a result, the Agents stated that the tenancy ended on April 30, 2020. The Agents also stated that the Tenant gave their forwarding address on that date. The Agents stated that the Tenant also gave authorization in writing for the Landlord to retain their \$735.00 security deposit on the move-out condition inspection report for money owed.

Copies of the move-in and move-out condition inspection reports were submitted for my review and consideration.

The Agents stated that as a result of the Tenant giving only one days notice to end the tenancy on April 30, 2020, instead of May 31, 2020, they were unable to re-rent the rental unit until July 1, 2020, and as a result, they lost \$1,558.00 in rent for June 2020, for which the Tenant is responsible. The Agents also sought \$100.00 for recovery of the filing fee and authorization to retain the Tenant's \$735.00 security deposit towards the outstanding rent owed.

No one appeared on behalf of the Tenant to provide any evidence or testimony for consideration, despite my finding earlier in this decision that they were deemed served with a copy of the Application, the Notice of Hearing, and the Landlord's documentary evidence on July 2, 2020, well in advance of the hearing.

### Analysis

I accept the undisputed documentary evidence and affirmed testimony of the Agents and therefore find the following:

- Rent in the amount of \$1,558.00 was due on the first day of each month at the time the tenancy ended;
- The Tenant gave only one days notice to end their periodic tenancy on April 30, 2020;
- The Tenant provided the Landlord with their forwarding address on April 30, 2020;
- Condition inspections and reports were completed by the parties in accordance with the Act and the regulations at the start and the end of the tenancy;
- The Tenant authorized the Landlord in writing to retain their \$735.00 security deposit towards money owed; and
- The Landlord lost \$1,558.00 in rent for May 2020, as the Tenant gave insufficient notice to end their tenancy on April 30, 2020.

Section 45(1) of the Act allows tenants to end periodic tenancies by giving their landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. As the tenancy agreement states that rent is due on the first day of each month, I therefore find that the earliest date upon which the Tenant could have lawfully ended the tenancy under section 45(1) of the Act by giving notice on April 29, 2020, was May 31, 2020. I therefore find that the Tenant was responsible to pay full rent in the amount of \$1,558.00 on May 1, 2020, regardless of whether or not they chose to reside in the rental unit in May.

Based on the affirmed and undisputed testimony of the Agents and the documentary evidence submitted on behalf of the Landlord, I am satisfied that the Tenant failed to

pay rent for May of 2020 as required by section 26(1) of the Act and that the Landlord therefore suffered a loss in the amount of \$1,558.00. Pursuant to section 7 of the Act, I therefore grant the Landlord's claim for recovery of \$1,558.00 in unpaid rent for May 2020 from the Tenant.

As I am satisfied that the Tenant agreed in writing that the Landlord could retain their \$735.00 security deposit towards money owed, and as there is no evidence before me that the Landlord would be prohibited from doing so pursuant to section 38(5) of the Act, I therefore grant the Landlord authorization to withhold the security deposit for unpaid rent. As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary order in the amount of \$923.00; \$1,558.00 in unpaid rent, plus \$100.00 for recovery of the filing fee, less the \$735.00 security deposit retained.

#### Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$923.00**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: October 6, 2020

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Residential Tenancy Branch