



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL-S, FFL**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The landlord was represented at the hearing by his agent/property manager, PD ("landlord"). The tenant CP attended the hearing, representing both tenants. The parties acknowledged the exchange of the Application for Dispute Resolution and evidence and both stated there were no concerns with timely service of documents. Both parties were prepared to deal with the scheduled application.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for the tenant not providing a full month's notice to end the tenancy?

Can the landlord retain the security deposit?

Can the landlord recover the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. This fixed one-year tenancy began on May 1, 2019, becoming month to month at the end of the first year. Rent was set at \$2,700.00 per month payable on the first day of the month. A security deposit of \$1,350.00 was collected by the landlord which he continues to hold. The parties agree a condition inspection report was done at the commencement and end of the tenancy. The tenants did not sign the condition inspection report on move out, however landlord does not allege any damage done to the rental unit during the tenancy.

The landlord gave the following testimony. The tenant gave the landlord written notice to end the tenancy by email on May 19, 2020. The effective date provided on the tenant's notice was June 15, 2020. On May 31<sup>st</sup>, the tenant paid a half month's rent for June by e-transfer of funds and a copy of the e-transfer was provided as evidence. The landlord submits that the tenant was required to pay June's full month's rent because the tenant gave notice in the middle of the month. The landlord testified that the rental unit remained vacant after the tenants left for a period of 2 or 3 months. The landlord decided to sell the unit instead of re-renting it.

The tenant provided the following testimony. She acknowledges she emailed her notice to end tenancy to the landlord on May 19<sup>th</sup> with an effective date of June 15<sup>th</sup>. The reason for ending the tenancy is because there were issues with the refrigerator. During the month of May, the fridge began to leak eventually becoming unusable, forcing the tenant and her family to store their food in coolers. The landlord did not immediately provide a replacement full sized fridge, just a small bar fridge that the tenant found inadequate.

### Analysis

At the end of the fixed term, this tenancy became month to month. This is known as a periodic tenancy under the *Residential Tenancy Act*. Section 45 of the Act states:

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

**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.

Guidance to this section is provided in Residential Tenancy Branch Policy Guideline PG-13 [Rights and Responsibilities of Co-tenants] at part E:

*In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due.*

In this case, the effective date of the tenant's notice was June 15<sup>th</sup>, a date that is earlier than one month after the date the landlord received the notice, or May 19<sup>th</sup>. This violates section 45(1)(a) of the Act. Second, rent is payable under the tenancy agreement on the first day of the month. Section 45(1) of the Act does not allow a tenant to end a tenancy in the middle of the month, so the notice to end tenancy also violates section 45(1)(b) of the Act.

Section 7 of the Act states: 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.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

I find that the tenant violated section 45 of the Act and as a result of this violation, the landlord was not given a full month's notice of the tenancy ending. Although the tenant paid rent for the first half of June, I find the landlord is entitled to compensation for the remaining half of June which would be the earliest time a notice to end tenancy given on May 19<sup>th</sup> could take effect. The landlord is entitled to a monetary order in the amount of \$1,350.00 in accordance with section 67 of the Act.

The landlord continues to hold the tenant's security deposit in the amount of \$1,350.00. In accordance with the offsetting provisions of section 72 of the Act, the landlord may retain the tenant's security deposit in partial satisfaction of the monetary order.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

The landlord may retain the tenants' security deposit pursuant to section 38(4)(b).

I issue a monetary order in the landlord's favour in the amount of **\$100.00**.

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 15, 2020

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Residential Tenancy Branch