



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Multiple Realty Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement under section 67;
- an authorization to retain the tenant's security deposit, pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by agent KH and the tenant was represented by advocate JZ. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issues to be Decided

Is the landlord entitled to:

1. retain the security deposit and receive a monetary award for compensation for losses caused by the tenant?
2. an authorization to recover the filing fee?

## Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate his application.

Both parties agreed they entered into a fixed-term tenancy from September 01, 2019 to August 31, 2020. Monthly rent of \$2,280.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$1,140.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenant vacated the rental unit on March 31, 2020 prior to the end of the fixed term.

The landlord posted advertisement on three websites on March 21, 2020. The landlord asked for the same rent amount and reduced the price to \$2,200.00 after three weeks. The landlord further reduced the asking price to \$2,100.00 by the end of April 2020. The landlord received one offer and further reduced the rent amount to \$1,900.00 in order to sign the new tenancy agreement on May 27, 2020 for a tenancy starting on August 01, 2020. A copy of the new tenancy agreement was submitted into evidence.

The landlord is asking for loss of rental income for the months of April, May, June and July 2020 in the amount of \$9,120.00 and \$380.00 for the difference of August's rent. The total amount the landlord is seeking is \$9,500.00.

The landlord stated he tried his best to mitigate the losses and the tenant did not help to find a new tenant to the rental unit.

The tenant affirmed he is facing financial hardship due to the pandemic.

## Analysis

Sections 7 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

(2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant was aware the tenancy was for a fixed term ending on August 31, 2020 and the tenant ended the tenancy early on March 31, 2020 contrary to section 45(2)(b) of the Act:

(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)

I find that due to the tenant's failure to pay rent until the end of the fixed term tenancy agreement on August 31, 2020, the landlord incurred a loss of rent income from April 01, 2020 to August 31.

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

[...]

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Further to that, Policy Guideline 5 states:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

I find the landlord failed to mitigate his losses after May 27, 2020 because he accepted a new tenant on that date for a tenancy starting on August 01, 2020 and failed to re-rent the unit as soon as possible. The landlord could have continued to look for a new tenant to start immediately a new tenancy and further mitigate the losses.

In accordance with section 7 of the Act, I find the tenant is responsible for the loss of rental income from April 01 to May 27, 2020 in the total amount of \$4,332 (one full month and 27 *pro rata* days at \$76.00 per day).

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenant's deposit of \$1,140.00 in partial satisfaction of the monetary award granted.

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

In summary:

Loss of rental income from April 01 to May 27, 2020	\$4,332.00
Filing fee	\$100.00
Total awarded:	\$4,432.00
Minus security deposit:	\$1,140.00 (subtract)
<b>Total monetary award:</b>	<b>\$3,292.00</b>

### Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,140.00 security deposit and grant the landlord a monetary order in the amount of \$3,292.00.

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: November 23, 2020

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Residential Tenancy Branch