



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL, FFL**

### Introduction

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

- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by an agent, BA ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he and the tenant attended a previous dispute resolution proceeding regarding an application filed by the tenant. The file number for the previous hearing is recorded on the cover page of this decision. On that application, the tenant provided his current residential address. The landlord testified that on August 12<sup>th</sup>, he served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail to the address provided by the tenant on his application for dispute resolution. The tracking number for the mailing is recorded on the cover page of this decision. In accordance with sections 89 and 90 of the Act, the tenant is deemed served with the Application for Dispute Resolution Proceedings Package five days after mailing, or August 17, 2020. This hearing was conducted in the absence of the tenant.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order because the tenant did not give a notice to end tenancy in accordance with the Act?

### Background and Evidence

The landlord gave the following undisputed testimony. The month to month tenancy began in April 2019. Rent was set at \$1,250.00 per month, payable on the first day of each month. A security deposit was collected, but was subsequently returned to the tenant following the decision of an arbitrator.

On December 16, 2019, the tenant called the landlord and gave the landlord verbal notice that he would end the tenancy immediately. The tenant moved out by December 17<sup>th</sup>. The landlord testified that the tenant had paid full rent for the month of December, however he was unable to find a new tenant for the rental unit until January 15<sup>th</sup>. The landlord seeks compensation for the first two weeks of January, the period the rental unit remained vacant.

The landlord testified that the tenant verbally agreed that the landlord could retain the tenant's security deposit for giving short notice to end the tenancy. Despite this, the tenant '*went back on his word*' and filed an Application for Dispute Resolution to recover the security deposit. The landlord notes that in his Application for Dispute Resolution, the tenant stated, "*The reason they refuse to give the deposit back is that we gave our moving notice with only a short notice before moving. Our moving has nothing to do with the security deposit*".

### Analysis

Pursuant to section 45(1) of the *Residential Tenancy Act*, 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.

Schedule 12 of the Residential Tenancy Regulations states:

#### **Ending the tenancy**

**12** (1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.

*[For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]*

(2) This notice must be in writing and must

(a) include the address of the rental unit,

- (b) include the date the tenancy is to end,
- (c) be signed and dated by the tenant, and
- (d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.

Based on the undisputed testimony of the landlord and the copy of the tenant's Application for Dispute Resolution to verify this fact, I find that the tenant gave verbal notice to end the tenancy on December 16<sup>th</sup> and vacated the rental unit on December 17<sup>th</sup>. The tenant's action of serving one day's notice to end tenancy upon the landlord is contrary to section 45(1) of the Act and schedule 12 of the Regulations. For the tenant to give his notice to end tenancy on December 16<sup>th</sup>, the earliest date he could have ended the tenancy in accordance with the Act and regulations, would be January 30<sup>th</sup>. I find the tenant in breach of both section 45 of the Act and schedule 12 of the regulations.

As the landlord was able to find a new tenant for January 15<sup>th</sup>, I find he took steps to mitigate the losses he would have incurred while the rental unit remained vacant. I find the landlord is entitled to compensation for the half month's rent for January, in the amount of \$625.00 pursuant to section 67 of the Act.

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

I issue a monetary order in the landlord's favour in the amount of **\$725.00**. 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