



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on November 30, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenants for the cost of this application.

The Landlord and the Tenants both attended the hearing and provided testimony. The Tenants confirmed receipt of the Landlord's application and evidence package. The Tenants noted that the package was missing a few of the required documents (Respondent instructions, fact sheets) and they called the RTB on September 4, 2020, to enquire about what should have been included. Subsequently, on that same day, the RTB provided copies of the required documents to the Tenants, and the Tenants were able to successfully upload a large evidence package, and were prepared to proceed at the hearing. Although the Landlord should have included all documents, including the respondent instructions etc., I am satisfied the Tenants have received these documents, well in advance of the hearing. It is not prejudicial to proceed, as the Tenants were willing and able to respond to the issues on the application. I find the Tenants were sufficiently served for the purposes of this hearing.

The Landlord confirmed receipt of the Tenant's evidence package and did not take issue with the service of those documents.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. 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 compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

### Background and Evidence

A copy of the Tenancy Agreement was provided into evidence, and it shows that the Tenants moved in on October 1, 2019, and they signed a fixed-term tenancy agreement, ending on October 31, 2020. Monthly rent was set at \$2,300.00 and was due on the first of the month.

The Tenants and the Landlord both agree that a security deposit of \$1,150.00, and a pet deposit of \$1,150.00 was paid, despite the Tenancy Agreement only indicating that one deposit was collected. The Landlord confirmed that he still holds the security and pet deposits.

The parties both agree that the Tenants moved out on July 31, 2020. The Tenants explained that they had to move out, on short notice, because they were increasingly uncomfortable with the criminal and drug activity outside the building. The Tenants explained that they moved to Vancouver from Toronto, and feel they were taken advantage of when they moved here because the neighbourhood and abutting areas were much worse than they had anticipated. The Tenants explained that this rental unit is only one storey up, and is next to an alleyway where there is frequent drug use, weapons, and crime. The Tenants stated these issues became worse in the summer of 2020. The Tenants provided photos of the nature of the issues.

The Landlord stated he has no control over the neighbourhood, and never misrepresented the rental unit. The Landlord stated that the Tenants were under a fixed term, and should be responsible for paying rent until the end of their term.

The Tenants explained that they initially tried to end their tenancy by mutual agreement in mid-July 2020, but when the Landlord was unwilling to do this, they felt they had to take action. The Tenants stated that on July 27, 2020, they sent their formal written

Notice to End Tenancy by registered mail to the Landlord. The Landlord acknowledges getting the Notice on July 31, 2020.

The parties provided copies of emails into evidence.

The Landlord submitted an online application and monetary worksheet specifying that he is seeking the following:

1) \$6,600.00 – Unpaid Rent

The Landlord stated that this amount is comprised of lost rent for August, September, and October 2020. The Landlord stated that as soon as he found out the Tenants would be moving out, with only 4 days notice, he posted an ad online to re-rent the unit. The Landlord stated that this ad was posted around the end of July 2020, for a reduced rent of \$1,900.00. The Landlord again reduced the rent to \$1,800.00 towards the end of August, and eventually found new tenants who moved in on September 19, 2020, at a rate of \$1,800.00 per month. The Landlord stated that the new Tenants paid a pro-rated amount of \$700.00 for September 19- September 30.

The Landlord was aware that he could not claim for rental losses from the Tenant if he had in fact re-rented the unit, and mitigated his losses. The Landlord reduced his claim from \$6,600.00 to \$4,100.00, based on the fact he re-rented the unit and recovered some of the loss.

Under this item, the Landlord is currently seeking \$4,100.00 which is comprised of:

- \$2,000.00 in rent for August 2020 (base rent of \$2,300.00 less the \$300.00 rent subsidy he received)
- \$1,600.00 in rent for September 2020 (base rent of \$2,300.00, less the \$700.00 pro-rated amount he collected under the new tenancy starting September 19, 2020)
- \$500.00 in rent for October 2020 (base rent of \$2,300.00, less the amount the new tenant started paying of \$1,800.00)

The Landlord feels the Tenants should be liable until the end of their fixed term, and should have to pay for his losses until the end of the fixed term lease, October 31, 2020.

2) \$257.25 – cleaning fee

The Landlord did not upload any evidence to support this portion of his claim, and as such, he withdrew this item at the hearing.

3) \$45.00 – NSF Fee

The Landlord stated that when he went to withdraw rent on August 1, 2020, the payment bounced, and the bank charged him \$45.00 because the Tenants had closed their bank account. A copy of this banking record was provided into evidence.

The Tenants stated that the Landlord shouldn't have attempted to withdraw rent from their account given they had already moved out on July 31, 2020.

4) \$100.00 – Filing Fee

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I note the Tenants were under a fixed term tenancy agreement until the end of October 31, 2020. I turn to the following portion of the Act:

***Tenant's notice***

***45 (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.*

I note the Tenants provided their Notice at the end of July 2020. The Landlord acknowledged receiving that Notice on July 31, 2020. However, by the time he received the Tenants' Notice, the Tenants were already planning on moving out that same day.

Although the Tenants felt they had no other choice but to move, due to the poor neighbourhood, I do not find this is the Landlord's fault, as he has little to no control over what occurs on the streets outside the building. I accept this unit is located in neighbourhood with high crime and drug use. However, I find there is insufficient evidence that this rental unit was misrepresented at the outset. I find it was the Tenant's responsibility to ensure the neighbourhood was sufficient for their needs, prior to moving in. In any event, I find there is insufficient evidence that the tenancy agreement was frustrated, or that the Tenants had any legal basis to end the tenancy prior to the end of the fixed term.

Pursuant to section 45(2) of the Act, the Tenants were unable to end their tenancy by way of their written Notice until the end of their fixed term, which was set to expire on October 31, 2020. I find the Tenants breached this section of the Act. It appears the Tenants moved out at the end of July 2020. However, I do not find their financial liability stopped as of that date.

The Landlord is entitled to claim for compensation to make up for any losses that were incurred, had the Tenants not breached the Act, moved out early, and left rental losses.

I note the following portion of the ***Policy Guideline #3 - Claims for Rent and Damages for Loss of Rent:***

*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.*

Had the Tenants not breached their tenancy agreement, and the Act, the Landlord would have normally collected \$2,300.00 per month up until the end of the fixed term, October 31, 2020. I find the Tenants are liable for these amounts. However, I note the Landlord was able to mitigate these losses, and re-rent the unit from September 19, 2020, onwards. In doing so, the Landlord collected \$700.00 in rent for September and \$1,800.00 for October. These amounts will be deducted from the amount of rent the Landlord would have otherwise received, had the tenants fulfilled their fixed term tenancy agreement.

I find the Landlord sufficiently mitigated his rental losses. He reposted the ad right away, reduced rent, and was able to re-rent the unit after only 1.5 months, despite it being in the middle of a pandemic.

In summary, I find the Tenants are liable for \$2,000.00 for August rent (\$2,300.00 less the \$300.00 government rent subsidy), plus \$1,600.00 for September, and \$500.00 for October 2020. The amounts for September and October are the differential between the amount they were paying under the fixed term agreement, and the amount the Landlord actually collected when he re-rented the unit (up until the end of October 31, 2020). The Tenants' liability for rent ended on October 31, 2020.

With respect to the NSF fee, I dismiss the Landlord's claim for this item, as it was an amount the Landlord tried to withdraw from the Tenants' bank account after they had already vacated the property. The appropriate remedy to recover unpaid rent, once the Tenant's have moved out, is to apply for dispute resolution, rather than attempt to withdraw the amounts from their account.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security and pet deposit, currently held by the landlord, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Unpaid rent	\$4,100.00
Filing fee	\$100.00

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Less: Security/Pet Deposit currently held by Landlord	(\$2,300.00)
<b>TOTAL:</b>	<b>\$1,900.00</b>

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### Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,900.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 30, 2020

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Residential Tenancy Branch