



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCL-S, FFL

### **Introduction**

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$550 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's property manager ("**RL**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 RL and I were the only ones who had called into this teleconference.

RL testified he served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on July 17, 2020 to the tenant's forwarding address. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on July 22, 2020, five days after RL mailed it, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$550;
- 2) recover their filing fee;
- 3) retain the security deposit in satisfaction of the monetary orders made?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of RL, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting March 1, 2019. Monthly rent was \$1,128 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$550, which the landlord continues to hold in trust for the tenant.

RL testified that the tenant did not pay any rent on July 1, 2020. He testified that he tenant emailed his office on July 3, 2020, and advised that he had moved out on June 15, 2020. RL testified that the tenant had not given any prior notice of this move.

RL testified that he immediately began looking for a new renter of the rental unit and secured one to move in on July 16, 2020. The new renter pays \$1,150 in monthly rent and paid \$575 on July 16, 2020 representing payment for July 16 to 31, 2020.

RL testified that he notified the tenant of this and demanded that the tenant pay a half-months' rent to compensate the landlord for the loss of ability to collect rent for the first half of July 2020. The tenant refused and provided him with his forwarding address (which was in Alberta). RL then made this application to recover the lost rent.

## **Analysis**

Residential Tenancy 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 "**Four-Part Test**")

Section 45 of the Act states:

- 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.

The tenant breached this section of the Act. He provided no notice that he would be vacating the rental unit on June 15, 2020 (which has the effect of ending the tenancy, per section 44(1)(d) of the Act). As rent is due on the first of the month, if the tenant wanted to end the tenancy on June 15, 2020, he would have had to notify the landlord of this no later than April 30, 2020.

As a result of the tenant's breach, the landlord lost the full amount of rent for July 2020 owed under the tenancy agreement (that is, \$1,128). The landlord was paid \$575 by the new occupant of the rental unit for July 16 to 31, 2020. Accordingly, the landlord suffered damage of \$553 as a result of the tenant's breach ( $\$1,128 - \$575 = \$553$ ).

I find that the landlord acted reasonably to minimize the loss suffered by securing a new tenant in approximately two weeks.

The landlord has satisfied all four parts of the Four-Part Test. Accordingly, she must be compensated for the loss suffered as a result of the tenant's breach. She has applied for an amount less than the loss suffered. I cannot make a monetary order for an amount that exceeds the amount applied for. Accordingly, I order that the tenant pay the landlord \$550.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover their filing fee from the tenant (\$100).

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

**Conclusion**

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenant pay the landlord \$100, representing the following:

Loss of rent (June 1 to 15)	\$550
Filing Fee	\$100
Security Deposit credit	-\$550
<b>Total</b>	<b>\$100</b>

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 6, 2020

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Residential Tenancy Branch