



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIVE MILE HOLDINGS LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL MNDCL-S

### **Introduction**

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

- and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, ZM, attended the hearing by way of conference call, the tenant did not. I waited until 1:40 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on by way of registered mail on August 9, 2020 to the forwarding address provided by the tenant. The landlord provided the tracking details in their evidentiary materials. In accordance with sections 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on August 14, 2020, five days after its registered mailing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for losses and money owed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

## **Background and Evidence**

This fixed-term tenancy began on June 15, 2020, and was to end on May 31, 2021. Monthly rent was set at \$1,880.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$940.00, which they still hold.

The tenant gave notice on July 10, 2020 that they would be vacating the rental unit, terminating the tenancy as of July 31, 2020, and the tenant moved out in accordance with that notice. The landlord provided a copy of this notice in their evidentiary materials.

The landlord advertised the unit for rent, and was able to mitigate their losses and re-rent the rental unit for August 15, 2020. The landlord is seeking a monetary order for the loss of rental income for half of August 2020 in the amount of \$940.00 plus recovery of the filing fee.

## **Analysis**

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**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.

The landlord provided undisputed evidence at this hearing that the tenant had moved out before the end of this fixed-term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. The tenant moved 10 months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and are only seeking the loss of rental income for half of August 2020. I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for the remainder of the tenancy, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's monetary claim of \$940.00 for the monetary loss suffered by the landlord. In accordance with the offsetting provisions of section 72 of the *Act* I order the landlord to retain the tenant's security deposit in satisfaction of this monetary award.

As the landlord was successful in their application, I am allowing the landlord to recover the filing fee from the tenant.

### **Conclusion**

I order the landlords to retain the tenant's security deposit of \$940.00 in satisfaction of the monetary award for the tenant's failure to comply with sections 44 and 45 of the *Act*.

I issue a Monetary Order in the amount of \$100.00 in the landlord's favour, which allows the landlord to recover the filing fee for this application.

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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: December 2, 2020