



# 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 was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation for damage under the Act of \$900.00, retaining the security deposit for this claim; and to recover her \$100.00 Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenant, T.K., was also present and provided affirmed testimony. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application, and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that they signed a tenancy agreement for a fixed tenancy that was to begin on September 1, 2020 and run to August 31, 2021. The tenancy was to have a monthly rent of \$1,800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$900.00, and a \$250.00 pet damage deposit. They agreed that the Tenant never moved in, as the Tenant indicated to the Landlord that he had could not afford to move in, as arranged.

The Landlord said:

We were talking about him moving in since about June. We signed the tenancy agreement back then, but I hadn't heard from him much. I said I'd have AirBnB guests until the 30<sup>th</sup> of August, and he was still going to move in then. On August 28 he told me he couldn't afford it. I had moved furniture around, emptied out the storage room upstairs - emptied that for him - which took three days work, and he informs me on August 28 that he can't afford to move in. I lost a month's rent, plus a lot of work I did to try to organize it for him.

I tried to get the house back on AirBnB – I had a return customer move into the trailer, but I only charged \$700.00 for that. When it was back on AirBnB, a few people would stay, but not near the \$900.00 point even.

Even when he texted me, I said, if you would have let me know a couple weeks earlier, I would have done a lot less work preparing it for you. He said he got a job, but how could he move to the Island, if he wasn't going to move in?

In her Application, the Landlord explained what she is seeking in this proceeding, as follows:

The tenant was supposed to move in Sept 01/20, but texted Aug 28/20 at 8:08pm saying that he can't move in because he doesn't have the money. This was not enough time for me to find another tenant so I'm requesting to keep the security deposit as I'm out September['s rent].

The Landlord submitted a copy of the Tenant's text to her dated August 28, 2020, at 8:08 p.m. This text said:

Hey, just wanted to communicate with you. We moved early for me to start work. I found a permanent full time job at [F.B.] materials. That being said, moving early meant we had to spend extra on a place temporarily from what we have save for rent. I was just wondering if we could push the lease to October 1<sup>st</sup> please? We really like the house and love the location, so I really don't want to back out. Thanks in advance :).

The Landlord replied, as follows:

I'm sorry but you have put me in a position where I can't afford to do it. You should've let me know a lot sooner and we could've work things out. I need to look at the contract to see what your entitled to get back.

The Tenant replied:

I'm sorry, it was very last minute for us as well, I wish I could've let you know sooner. I'll let you get back to me on that. Sorry again.

The Landlord said she returned the \$250.00 pet damage deposit to the Tenant within two days of being informed that the Tenant was not moving in.

In the hearing the Tenant said:

The soonest I knew about that job was on the 21<sup>st</sup> when I got the call back. What had happened was I was going to a place called [T.L.] Corp., a temporary labour place.

That was in June, so I've been searching for a job since then, to see about something full time.

But anyway, so got the call back on the 21<sup>st</sup> of August, and we loaded up and started driving and I started on the 24<sup>th</sup> of August. Admittedly yes, I could have texted one week sooner. But I was in the process of driving over 1,000 kilometres. I had asked if we could move the start date of the tenancy to October 1<sup>st</sup>, because we loved the location, the pictures of the house. We knew we'd have trouble finding a house for our kid and dog. I wanted to try to figure something

out. It was four days from the initial move in date, but we couldn't apply any part of that security deposit to another house, if we found another place. We moved all the way back to Alberta, borrowed money from family, and are still paying that back to this day. I don't have that job anymore. I understand [the Landlord's] side of things, but it affects both people as much.

The Witness said:

I know we had to get the pet deposit back. We didn't step foot in the house, didn't cause physical damage - maybe some financial damage. He had stated: 'I was just wondering if I could push the lease to October. I don't want to back out'.

She came back with - see the evidence of the messages - she said, 'you put me in a position . . . should have called me sooner. I'll check the tenancy agreement to see what you should get back'.

I submitted a text to me; it is negative – very rude and put me in a bad mood for the rest of the week. I ended up quitting my job because we weren't finding a place, I chose to quit the job and move back to Alberta.

We were moving from [R.D.] Alberta, and found a place on . . . about half of the rent that we needed to pay was gone, and didn't want to show up with only \$900.00 until I get paid.

So that happened and being that both of us have mental health issues, it felt like we were going backward. We borrowed up to \$600.00 from family. [The Tenant] had a job here and was laid off right before we moved. We found the [S.F.H.] – farm tenting. We did that and it was nice, but then it started to get colder. When [the Tenant] asked if we could wait a bit . . .

The Landlord said:

They're making me out to be the bad one . . . I sent out the pet deposit, everything was fine, but once I did that, the next day he said that he's homeless. I let him know that I'm a single mom, and it is what it is, and you put me in a bad position. He went on about how . . . if he would have let me know on the 21<sup>st</sup>, but he didn't text until the 28<sup>th</sup>. . . I had cancelled AirBnB reservations. He should have been upright. There was no texting from July 23 to August 28. I don't

understand how you don't know your money situation before you head on the road.

The Tenant and Witness spoke of the Landlord not having offered them alternatives, so that they could continue the tenancy. The Landlord that the Tenant never mentioned any alternatives for a solution to her. She said: "You never mentioned anything about this; you never picked up the phone. I'd like to emphasize that they put me in a bad position, as well. I do business properly."

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Pursuant to section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. I find that the Tenant signed the tenancy agreement, along with the Landlord, and the Tenant was bound by his signature in the tenancy agreement.

Section 7(1) of the Act states that if a landlord or a tenant does not comply with the Act, regulation or tenancy agreement, the non-compliant party must compensate the other for the damage or loss that results. Section 67 of the Act authorizes me to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 45 of the Act sets out a tenant's obligations regarding giving notice to end a 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.

In this case, the undisputed evidence before me is that the Tenant breached the fixed term tenancy agreement by requesting to postpone the start date of the tenancy within four days of the start of the tenancy. There is no evidence before me that the Tenant proposed to repay September's rent at any time in the future; therefore, the Tenant's request would have left the Landlord without rental income of \$1,800.00 for September 2020. When the Landlord did not agree to this revision of the tenancy agreement, the Tenant chose to move back to Alberta, rather than pursuing the continuation of the tenancy by exploring options with the Landlord.

Based on the evidence before me overall, I find that the Tenant effectively ended the tenancy with his course of action. According to the Act, the Tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement, which was August 31, 2021. I find the Tenant breached section 45(2) of the Act, by ending the tenancy prior to the date on which this was allowed under the Act.

I find that the Landlord did what she could to mitigate the loss she incurred by the early end to the fixed term tenancy, by seeking to rent it out on AirBnB. However, the Landlord was unable to recoup the lost rental income from September 2020, due to short notice end of the tenancy. The Landlord could have sought greater compensation from the Tenant in this matter; however, she only seeks to retain the \$900.00 security deposit, as compensation for lost income in September.

RTB Policy Guideline #3 states that damages awarded are an amount sufficient to put the injured party in the same position as if the other party 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.

Therefore, I find that the Landlord is entitled to recovery of what she seeks in this matter and I, therefore, award the Landlord with **\$900.00** in lost rental income for which she applied, pursuant to section 67 of the Act. The Landlord is authorized to retain the Tenant's \$900.00 security deposit in full satisfaction of this award.

The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act. I grant the Landlord a Monetary Order of **\$100.00** from the Tenant in this regard.

### Conclusion

The Landlord is successful in her Application for retaining the \$900.00 security deposit,

as she provided sufficient evidence that the Tenant breached the tenancy agreement and the Act by his actions which, effectively, ended the tenancy. The Landlord is awarded the \$900.00 she seeks, and is authorized to retain the Tenant's \$900.00 security deposit in full satisfaction of this award.

I also award the Landlord with recovery of the \$100.00 Application filing fee, given her success in her claim. As such, I grant the Landlord a \$100.00 Monetary Order from the Tenant for satisfaction of this award.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 31, 2020

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Residential Tenancy Branch