



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

On October 5, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with M.S., the other Landlord/owner. Tenant J.R. attended the hearing with S.S. attending as her advocate. All parties in attendance provided a solemn affirmation.

The Landlord advised that she served each Tenant with a separate Notice of Hearing and evidence package by priority post on October 9, 2020, and the Tenant confirmed that they received both packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been served the Notice of Hearing and evidence packages. As such, this evidence will be accepted and considered when rendering this Decision.

S.S. advised that the Tenants' evidence was served to the Landlord by placing it in the Landlord's mailbox on January 13, 2021, and the Landlord confirmed that they received this package that day. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, the Tenants' evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; 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 a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 15, 2020 as a month-to-month tenancy and it ended when the Tenants gave up vacant possession of the rental unit on September 30, 2020. Rent was established at \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenants provided a forwarding address in writing when they placed it in their own mailbox for the Landlord to pick up on September 25, 2020. The Landlord received this on September 28, 2020.

The Landlord advised that they are seeking compensation in the amount of **\$1,800.00** for a loss of rent for October 2020. She stated that the Tenants gave their written notice to end the tenancy on September 25, 2020 that was effective for September 30, 2020. A copy of this written notice to end tenancy was submitted as documentary evidence. She stated that they sold the rental unit and that the purchaser took possession on October 5, 2020. She stated that they will keep the prorated amount of rent for the five days of October 2020 rent that they are owed, and they will give the purchaser the difference to cover the rental loss that is still owed.

S.S. advised that the Landlord gave the Tenants a letter ending the tenancy on August 21, 2020. She stated that this letter indicated that there were “grounds for eviction” because they were all “not on the same page”. The Landlord then decided to sell the rental unit. Based on this letter and the fact that the rental unit might be sold, the Tenants were worried that they would not find alternate accommodation. So, they took this letter as a notice to end their tenancy and they proceeded to find alternate accommodations. She confirmed that the letter from the Landlord was not an approved form required under the *Act* to end a tenancy. She stated that the Tenant suffers from a

medical condition and she did not realize that the Landlord was required to use an approved form in order to end a tenancy. She also acknowledged that the Tenants gave their written notice to end the tenancy on September 25, 2020, effective for September 30, 2020.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

The undisputed evidence before me is that the Landlord received the Tenants' forwarding address in writing on or around September 25, 2020. Moreover, the tenancy ended when the Tenants gave up vacant possession of the rental unit on September 30, 2020. As the Landlord made this Application to claim against the deposit within 15 days of September 30, 2020, I find that the Landlord complied with the requirements of Section 38 the *Act* and that the doubling provisions do not apply in this instance.

Section 52 of the *Act* requires that in order for a Landlord to end a tenancy, the Landlord must serve a notice **in writing**, that it must be signed and dated by the Landlord, that it must give the address of the rental unit, that it must state the effective date of the notice, that it must state the grounds for ending the tenancy, and that it must be in the **approved form**.

These same requirements apply to a Tenants' notice to end the tenancy; however, there is no approved form for the Tenants to use.

Section 45 of the *Act* states that should the Tenants want to end the month-to-month tenancy, they must by give the Landlord their written notice to end the tenancy that would be effective on a date that is not earlier than one, whole month after the date the Landlord receives the notice.

Section 53 of the *Act* states that any incorrect date in a notice to end tenancy will automatically self-correct to the proper date.

Section 67 of the *Act* allows for compensation to be awarded to a party if damage or loss results from a party not complying with the *Act*, the *Residential Tenancy Regulations*, or a tenancy agreement. Furthermore, an Arbitrator may determine this amount and may Order that party to pay compensation to the other party.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a month-to-month tenancy agreement on April 15, 2020 and that the tenancy effectively ended when the Tenants gave up vacant possession of the rental unit on September 30, 2020. While it is the Tenants' position that they were entitled to rely on the Landlord's letter dated August 21, 2020 as a notice to end their tenancy, this letter clearly does not meet the requirements of Section 52 as it is not an approved form to end a tenancy pursuant to the *Act*.

The consistent evidence before me is that the only written notice to end a tenancy that complied with the *Act* was the Tenants' written notice of September 25, 2020. Furthermore, as this notice cannot be effective earlier than one month after the date the Landlord receives the notice, the effective date of this notice would automatically self-correct to October 31, 2020. In essence, the Tenants must have given one, whole month's notice in writing to end the tenancy.

Based on the undisputed evidence before me, I do not find that the Tenants ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 45 and 53 of the *Act*. Moreover, even though the Tenants vacated prior to the effective end date of the tenancy, I find that the Tenants would still be responsible for October 2020 rent. Consequently, I grant the Landlord a monetary award in the amount of **\$1,800.00** to remedy this debt.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

I find it important to note that it will be up to the Landlord and the purchaser to settle the debt between themselves.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a monetary award as follows:

**Calculation of Monetary Order Payable by the Tenants to the Landlord**

Rental loss for October 2020	\$1,800.00
Recovery of filing fee	\$100.00
Security deposit	-\$900.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,000.00</b>

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$1,000.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: January 22, 2021

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Residential Tenancy Branch