



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HERO ESTATE HOLDINGS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on November 30, 2020. The Landlord applied for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, for permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site, or property?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

The parties agreed that this tenancy began on December 17, 2019, as a six-month fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. The Landlord testified that rent in the amount of \$3,000.00 was to be paid by the 17<sup>th</sup> day of each month. The parties agreed that the Landlord had been given a \$1,500.00 security deposit at the outset of this tenancy.

The Landlord testified that the Tenant served them with written notice to end their tenancy by registered mail on October 19, 2020, listing an effective end of tenancy date of November 16, 2020. The Landlord testified that the Tenants gave them short notice, so there are requesting to be awarded the following month's rent, in the amount of \$3000.00, due to the Tenant's short notice to end their tenancy.

When asked, the Landlord testified that they made no attempt to secure a new renter for the rental unit after receiving short notice to end tenancy from the Tenants.

The Tenant testified that they send their notice to end their tenancy to the Landlord on October 15, 2020, by Canada Post registered mail.

The Landlord testified that there was damage in four closets at the end of the tenancy and that it cost them \$661.50 to have the closest repaired.

The Tenant testified that there were only three closets damaged at the end of the tenancy and that they agreed they owed the Landlord's repair quote of \$661.50. The Tenant testified that they had given permission to the Landlord to retain \$661.50 from their security deposit to cover this amount at the end of their tenancy.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a six-month fixed term tenancy, beginning on December 17, 2019, for an agreed-upon monthly rent of \$3,000.00 due on the 17<sup>th</sup> day of each month, in accordance with the *Act*.

I accept the testimony and the documentary evidence submitted by the Tenant, and I find that the Tenants served the Landlord with written notice to end her tenancy on

October 15, 2020, by Canada Post registered mail. I find that the Tenant's notice was deemed to have been received by the Landlord on October 20, 2020, five days after it was mailed, pursuant to section 90 of the *Act*.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement or, in a month-to-month tenancy, without giving at least one clear rental period notice.

***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.*

Based on when the Landlord was deemed to have received the Tenant's notice to end tenancy, I find that this tenancy could not have ended in accordance with the *Act* until December 16, 2020. Therefore, I find that the Tenant failed to comply with the *Act* when they issued short notice to the Landlord to end the tenancy as of November 16, 2020.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. 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.

In this case, I find that the Tenant's breach of section 45 of the Act resulted in a loss of one month's rental income to the Landlord between November 17, 2020, to December 16, 2020, and that the Landlord has provided sufficient evidence to prove the value of that loss. However, I find that the Landlord did not act reasonably to minimize their damages or losses due to the Tenant's breach when they did not attempt to try and re-rent the rental unit during the Tenants notice period. Section 7(2) of the Act states the following:

***Liability for not complying with this Act or a tenancy agreement***

*7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

I find that the Landlord was in breach of section 7(2) of the Act when they did not take steps to attempt to rent the rental unit after being notified that the Tenant would be ending their tenancy with short notice. Therefore, I dismiss the Landlord's claim for the recovery of the loss of one month's rental income for the period between November 17, 2020, to December 16, 2020, in the amount of \$3,000.00.

As the parties to this dispute agreed that there was damage to closets during this tenancy, and the Tenant have agreed to the requested amount of \$661.50 to repair this damage, I grant permission to the Landlord to retain \$661.50 of the security deposit there are holding for this tenancy, in full satisfaction of this agreed to amount.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant had already agreed with the deduction of the awarded amount during these proceedings, and that Landlord has not been successful in the other portion of their application, I find that the Landlord is not entitled to the recovery of their filing fee for this application.

I order the Landlord to return the remaining portion of the security deposit that they are holding, in the amount of \$838.50, to the Tenant within 15 days of the date of this decision.

If the Landlord fails to return the security deposit to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their security deposit for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

### Conclusion

I grant permission to the Landlord to retain \$661.50 of the security deposit they hold for this tenancy in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining \$838.50 of the Tenants' security deposits to the Tenants within 15 days of the date of this decision.

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: March 23, 2021

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Residential Tenancy Branch