



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BREAMAR GARDENS APARTMENTS  
LIMITED and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for unpaid rent, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”) and both Tenants attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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 damages or compensation under the *Act*?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

Both parties agreed that the tenancy began on October 1, 2020, as a one-year fixed term tenancy. Rent in the amount of \$1,550.00 was payable on the first day of each month, and the Tenants paid a security deposit of \$775.00 at the outset of this tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they had served the Tenants with a One-Month Notice to End Tenancy for Cause on October 30, 2020 and that on November 1, 2020, the Tenants had served the Landlord with a notice that they were ended their tenancy immediately.

The parties agreed that the Tenants moved-out in accordance with the Notice they gave the Landlord and that the move-out inspection was completed on November 3, 2020, and that the Landlord collected the keys to the rental unit during this inspection.

The Landlord testified that they started advertising the rental unit as available for December 1, 2020. When asked, the Landlord testified that they did not attempt to rent the rental unit for any portion of November 2020.

### 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 one-year fixed term tenancy, beginning on October 1, 2020, in accordance with the *Act*.

I accept the testimony and the documentary evidence submitted in this case, and I find that the Tenants served the Landlord with notice to end her tenancy early on November 1, 2020.

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.

### ***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.*

I find that this tenancy could not have ended in accordance with the *Act* until September 30, 2021, and that the Tenants failed to comply with the *Act* when they issued notice to the Landlord to end the tenancy as of November 1, 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 rental income to the Landlord 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 for any portion of November 2020.

I find that the Landlord was in breach of section 7(2) of the *Act* when they did not take steps to attempt to re-rent the rental unit for the remaining portion of November 2020. Therefore, I dismiss the Landlord’s claim for the recovery of the loss of rental income for the month of November 2020.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

I order the Landlord to return the security deposit that they are holding for this tenancy to the Tenants within 15 days of the date of this decision.

I grant the Tenants leave to apply for the return of double their security deposit if the Landlord fails to return the deposit as ordered.

### Conclusion

The Landlord's application is dismissed without leave to reapply.

I order the Landlord to return 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 2, 2021

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Residential Tenancy Branch