



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNRL-S, MNDCL-S, MNDL-S, FFL

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for loss or damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

The landlord's testimony is as follows. The landlord testified that the one year fixed term tenancy began on October 1, 2019 and by mutual agreement the parties agreed it would end on October 1, 2020. The monthly rent of \$2600.00 was due on the first of each month. The tenants paid a security deposit of \$1300.00 which the landlord still holds. The landlord testified that written condition inspection reports were not conducted at move in or move out. The landlord testified that the tenants didn't pay rent for the month of September 2020 and moved out on September 19, 2020 without notice. The landlord testified that he should be entitled to rent for September and October 2020 due to improper notice being given. The landlord testified that the tenants did not pay their

portion of the utilities as per the tenancy agreement. The landlord testified that the tenants left the unit dirty at move out. The landlord testified that he didn't issue a notice to end tenancy to the tenants at any time.

The landlord is applying for the following:

|     |                                |           |
|-----|--------------------------------|-----------|
| 1.  | Unpaid Rent for September 2020 | \$2600.00 |
| 2.  | Unpaid Rent for October 2020   | 2600.00   |
| 3.  | Utilities                      | 890.78    |
| 4.  | Cleaning                       | 500.00    |
| 5.  | Filing Fee                     | 100.00    |
| 6.  |                                |           |
| 7.  |                                |           |
| 8.  |                                |           |
| 9.  |                                |           |
| 10. |                                |           |
|     | Total                          | \$6690.78 |

BH gave the following testimony on behalf of the tenants. BH testified that the landlord sent the tenants a letter on July 29, 2020 that they would not be extending the lease beyond October 1, 2020 and that they would be putting the house for sale. The tenant testified that they interpreted this notice as the landlord issuing a Two Month Notice to End Tenancy for Landlords Use of Property under section 49 of the Act. The tenant testified that under that notice they felt they were entitled to one months free rent and that it was understood that the tenancy ended on September 30, 2020 resulting in no rent owed for October.

The tenant testified that the without any condition inspection reports the landlord hasn't proven their claims for cleaning and miscellaneous damages. The tenant testified that although they were obligated to pay 60% of the utilities, the landlord is seeking costs for when they didn't live in the unit and have failed to provide a clear and precise number for this hearing.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

*Rent for September and October - \$5200.00*

Section 52 of the Act addresses the tenants claim of one month free rent

**Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

**(e) when given by a landlord, be in the approved form.**

I find that the landlord did not issue a notice to end the tenancy as alleged by the tenants pursuant to section 49 of the Act in the approved form and therefore are not entitled to one months rent as compensation. The tenant confirmed that they did not pay the rent for the month of September. I further find that although there are deficiencies in the paperwork regarding the tenancy agreement, the parties were operating under the assumption that the term was for one year ending on September 30, 2020. In the landlords' own letter, he noted the tenancy term was coming to a mutual end on September 30, 2020 and there was to be no extension. I find it illogical and unjustified for the landlord to pursue loss of rent for October if by their own testimony, the tenancy ended on September 30, 2020. As a result, I find that the tenants did not pay the rent for the month of September and the landlord is entitled to that but not to the loss of rent for October as the tenancy was agreed to have ended on September 30, 2020. The landlord is entitled to \$2600.00.

*Utilities \$890.78*

As noted above, the applicant must provide the exact amount of the loss they are seeking and supporting documentation. The landlord is seeking utility costs that go beyond the end of the tenancy. In addition, the landlord did not provide specific and an exact breakdown of costs but just a general estimate. Based on the insufficient and vague evidence before me, I dismiss this portion of the landlord's application.

*Cleaning \$500.00*

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting

documentation, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. In addition, the landlord gave a vague and unclear description of the costs and scope of cleaning and did not provide sufficient documentation to support the amount sought. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

The landlord is entitled to the recovery of the \$100.00 filing fee.

### Conclusion

The landlord has established a claim for \$2700.00. I order that the landlord retain the \$1300.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$1400.00. This order may be filed in the Small Claims 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: March 02, 2021

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Residential Tenancy Branch