



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GLR PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 01, 2020 (the "Application"). The Tenant applied for compensation for monetary loss or other money owed.

The Tenant appeared at the hearing. The Building Manager appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The parties confirmed the correct parties and rental unit address which are reflected on the front page of this decision.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant's evidence. The Building Manager testified that they did not receive the Tenant's evidence but were fine with admission of it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

### Issue to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started November 01, 2020 and was for a fixed term ending October 31, 2021. Rent was \$1,250.00 per month due on the first day of each month.

The parties agreed the Tenant moved out of the rental unit November 15, 2020.

The Tenant sought half of November rent back because the Tenant moved out of the rental unit November 15, 2020. The Tenant testified as follows. There were issues with the rental unit and building that the Tenant was not aware of until they moved in. The issues made the rental unit unlivable. They advertised the rental unit for rent, received a lot of interest and found someone willing to sign a tenancy agreement for November 15, 2020. The Building Manager would not agree to the prospective tenant entering a tenancy agreement for November 15, 2020.

The Building Manager testified as follows. The Tenant sent a text message November 02, 2020 saying the Tenant was moving out. They told the Tenant they required one month notice. The Tenant was required to pay rent for November even though the Tenant moved out November 15, 2020. The Landlord only rents units for the first of the month.

In reply, the Tenant testified as follows. The Building Manager did not tell the Tenant that the Landlord only rents units for the first of the month. They thought the Building Manager was agreeing to them moving out.

The Tenant agreed they gave notice November 02, 2020.

The Tenant submitted the following evidence:

- Text messages with prospective tenants
- Text messages between the parties
- A video about the rental unit advertisement
- Evidence about issues with the building

## Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

This was a fixed term tenancy ending October 31, 2021. The parties agreed the Tenant gave notice ending the tenancy November 02, 2020. The parties agreed the Tenant moved out of the rental unit November 15, 2020.

Section 45 of the *Act* sets out how a tenant can end a fixed term tenancy and states:

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Policy Guideline 8 addresses ending a tenancy for breach of a material term and states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

There is no evidence before me that the Tenant complied with section 45(3) of the *Act* in relation to ending the tenancy.

In the circumstances, it is the Tenant who breached section 45(2) of the *Act* by ending the fixed term tenancy early.

I note that, pursuant to section 45 of the *Act*, the Tenant could only have ended the tenancy on December 31, 2020 at the earliest even if this was a month-to-month tenancy, which it was not.

The Tenant has not explained how the Landlord breached the *Act*, tenancy agreement or *Residential Tenancy Regulation* by not accepting a proposed tenant for November 15, 2020 when the Tenant only gave notice on November 02, 2020. I note that this is not the Landlord's application for loss of rent in which case the Landlord would have had to mitigate their loss.

The Tenant was required to pay rent for November on November 01, 2020. The Tenant did not give notice until November 02, 2020. The Tenant breached the tenancy agreement and *Act* by ending the tenancy agreement early without complying with section 45(3) of the *Act*. In the circumstances, I am not satisfied the Tenant is entitled to half of November rent back.

The Application is dismissed without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 21, 2021

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Residential Tenancy Branch