



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROCKY MOUNTAIN PROPERTY MANAGEMENT  
COMPANY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR-S, FF

### Introduction

This hearing convened by teleconference on March 11, 2021, to deal with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord's agent (landlord) and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their affirmed evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenants confirmed that they received the landlord's evidence. The landlord said he received the tenants' evidence contained on a USB drive, but was unable to open it. I determined that the hearing could proceed, as there was no evidence that the tenants complied with Rule 3.10.5, which requires that the party submitting digital evidence must confirm, before the hearing, the other party has playback equipment or is otherwise able to gain access to the evidence.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants, to keep their security deposit to satisfy a portion of a monetary award, and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of January 1, 2018, for a "1 YEAR TERM", monthly rent of \$1,950, due on the 1<sup>st</sup> day of the month, and a security deposit of \$975 being paid by the tenants to the landlord.

The written tenancy agreement also said the tenancy is for "other periodic tenancy as indicated below, which was a "1 YEAR TERM". In their application, the landlord submitted that the tenancy was a fixed term agreement, ending on December 31, 2020.

The landlord retained the tenants' security deposit, having made this claim against it.

The landlord's monetary claim is listed as \$1,075, comprised of \$975 for loss of monthly rent from November 1-15, 2020 and the filing fee of \$100 paid for their application.

As to the claim for unpaid monthly rent, the landlord submitted he received the tenants' notice of termination of the tenancy on October 5, 2020. Filed into evidence is a copy of the text message communication, in which the tenant indicated they intended to give a 1 month notice of termination and asked if November 15<sup>th</sup> would work.

The landlord submitted that he received an email from the tenants on October 5, containing the tenants' one month notice of their "intent to terminate our tenancy at (*rental unit address*). Today's date is October 5, 2020. We will hand back the keys of the house by November 15<sup>th</sup>, 2020, thereby ending our tenancy". Filed into evidence was a copy of the email.

The landlord submitted that he never received the keys to the rental unit directly from the tenants, as they was dropped off in the mailbox. The landlord submitted that the tenants moved out in the November 1-15 time period.

The landlord submitted that he was able to find new tenants who moved in on November 15, 2020.

The landlord submitted that the tenants were responsible for the unpaid monthly rent for November 1-15, 2020, as they did not pay the half month's rent.

### **Tenants' response –**

The tenant, AP, submitted that they requested to move out and were fully out of the rental unit by October 27, 2020, and they dropped off the keys on October 30<sup>th</sup>.

The tenants submitted that they were forced to move out of the rental unit for their family's safety, due to the condition of the rental unit. The tenants submitted they had to fight the ants and bugs and they chose to leave as the landlord would not make the necessary repairs.

The tenant submitted they heard from the neighbours that new tenants moved into the rental unit on November 14, 2020.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

In this case, the written tenancy agreement form submitted by the landlord, on the Residential Tenancy Branch (RTB) standard form, shows that there were three options as to the type of tenancy, a fixed term, which was required to have an ending date, or a month-to-month, or another periodic tenancy as indicated below.

Instead of marking one of the boxes on the form, the landlord marked two boxes, each showing a "1 YEAR TERM". The only date referenced was January 1, 2018 as a tenancy start date.

For these reasons, I find the tenancy became a month-to-month tenancy after the one year term beginning on January 1, 2018, meaning that at the end of this tenancy, the tenants were on a month-to-month tenancy.

Under section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenants wanted to end the tenancy by November 15, 2020, which was their original end of tenancy date listed in both their text message and email to the landlord, the latest day the tenants could provide written notice to end the tenancy was September 30, 2020.

In this case, the tenants provided a notice to the landlord on October 5, 2020, for a move-out date of November 15, 2020. By giving notice on October 5, 2020, the tenants were obligated to pay the rent for November 2020 and did not.

I find the landlord submitted sufficient evidence that he took all reasonable steps to minimize the loss as he had secured new tenants for November 15, 2020. The landlord would not have known to look for tenants for November 1, 2020, due to the move out date of November 15<sup>th</sup> on the tenants' notices.

I therefore find the landlord submitted sufficient evidence that the tenants failed to give a proper written notice or even an authentic move-out date on their notices and that this inconsistent and insufficient notice caused the landlords to suffer a loss of rent revenue for November 1-15, 2020. I therefore find the landlord has established a monetary claim of \$975.

As the landlord was successful, I grant the landlord recovery of their filing fee of \$100.

The landlord applied to keep the tenants' security deposit and I allow the landlord's request to retain the security deposit of \$975 in partial satisfaction of their monetary award.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$100 under the following terms:

ITEM	AMOUNT
1. Unpaid rent for November 1-15, 2020	\$975.00
2. Filing fee	\$100.00
3. <i>Less security deposit</i>	-\$975.00
<b>TOTAL MONETARY ORDER</b>	<b>\$100.00</b>

The landlord is provided with this order 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: April 1, 2021

\_\_\_\_\_  
Residential Tenancy Branch