



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREENAWAY REALTY and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNRL-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 and pet 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 full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for 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 and Evidence

The landlord's agent gave the following testimony. The tenancy began on December 1, 2018. The rent of \$2870.00 was due on the first of each month. The tenants paid a security deposit of \$1400.00 and a pet deposit of \$1400.00 which the landlord still holds. The agent testified that on November 24, 2020 the tenants gave notice that they would be vacating the suite on November 30, 2020 citing that the landlord had breached

a material term of their tenancy; not providing clean safe drinking water, and not correcting it within a reasonable timeframe. The agent submits that they were actively working on the water issue and that the tenants ended the tenancy without giving proper notice. The agent testified that an ultraviolet filtration system was installed to address the issue as the property's water source is well water. The agent submits that the owner was providing bottled water to the tenants as a substitute. The landlord is seeking the loss of revenue for December 2020 in the amount of \$2870.00 plus the \$100.00 filing fee for a total claim of \$2970.00.

MG gave the following testimony on behalf of the tenants. MG testified that the lack of potable water began since they moved into the subject property. MG testified that they had acted in good faith in buying their own water as the landlord advised them that he would correct the issue. MG testified that despite numerous requests, the matter wasn't addressed. MG testified that the landlord failed to provide unrestricted potable water as required and that despite the efforts in the last couple of months of the tenancy, the landlord was too slow in reacting and addressing the issue. MG testified that he wants both his deposits returned to him.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. Both parties submitted extensive documentation which has been reviewed and considered. The principal aspects of the landlords claim, and my finding is set out below.

Both parties are relying on section 45 of the Act; the landlord is relying on section 45(1) and the tenants are relying on section 45(3). The relevant sections are as follows:

### **Tenant's notice**

- 45** (1)A tenant may end a periodic 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, and
  - (b)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.

Both parties agreed that the quality and safety of the water supply had been an ongoing issue. Where the parties vary, is whether the landlord was addressing the issue in a timely fashion. I have considered the following section:

### **Terminating or restricting services or facilities**

- 27 (1) A landlord must not terminate or restrict a service or facility if**
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or**
  - (b) providing the service or facility is a material term of the tenancy agreement.**

After reviewing the extensive documentation from both parties and considering their testimony, I find that the landlord had not addressed the issue in a reasonable period after the tenant gave written notice. Although the tenant advised the landlord on November 10, 2020, he wanted the issue addressed within 14 days, it was not new information to the landlord. The landlord was aware of the issue since at least March 2020. Based on all the above and on a balance of probabilities, I find that the tenants exercised their right as noted under section 45 of the Act and ended the tenancy as the landlord failed to comply with a material term of the tenancy agreement as required in section 27(1) of the Act. The landlord has not been successful in this application.

### **Conclusion**

The landlord's application is dismissed in its entirety without leave to reapply. I order that the landlord return the \$1400.00 security deposit and \$1400.00 pet deposit to the tenants. I grant the tenants an order under section 67 for the balance due of \$2800.00. 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: April 23, 2021

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Residential Tenancy Branch