



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "Landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

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. The principal aspects of the claim and my findings around each are set out below.

This tenancy began on February 1, 2019 originally for a fixed-term ending on January 31, 2020. The monthly rent was \$2,370.00 payable on the first of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the landlord.

By an email correspondence dated January 17, 2020 the tenant notified the landlord that they wished to “extend the contract for one more year”. The parties signed the agreement providing that the new tenancy commenced on February 1, 2020 and was for a fixed-term ending on January 31, 2021.

The tenant gave notice to the landlord to end the tenancy on October 28, 2021 and vacated the rental unit by November 30, 2020. The landlord submits that despite their best efforts to advertise and find a new occupant for the rental unit they were unable to find a new tenant until February 2021. The landlord submits that they incurred rental income losses for December 2020 and January 2021 in the amount of \$4,740.00.

The tenant submits that the landlord did not take appropriate measures to advertise the rental unit and that they failed to mitigate their losses. In addition the tenant argues that they believed that by agreeing to a renewal of the fixed-term tenancy it became a month-to-month tenancy with no further obligation on the tenant. The tenant also testified that the terms of the tenancy agreement included use of utilities and they believe that the landlord required them to pay for their own utilities in violation of the agreement.

The landlord also seeks a monetary award for cleaning of the rental unit in the amount of \$431.00. The tenant testified that they agree with this claim and have authorized the landlord to make a deduction of this amount from their security deposit.

### 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 prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.” The guideline provides that while it is not necessary that the party making a claim do everything possible to minimize the loss, some reasonable efforts must be taken.

In the present case I find that this was a fixed-term tenancy with a term ending on January 31, 2021. The original tenancy agreement provides that it may be renewed for an additional term, the correspondence between the parties clearly indicate that they understood they were renewing the tenancy agreement and the signed document states that the tenancy is for a fixed-term concluding on January 31, 2021. I do not find the tenant's interpretation of the tenancy agreement to have any basis in the evidence.

Furthermore, I find little evidence to support the tenant's submission that they were entitled to withhold monthly rent or were not obligated to pay due to the landlord's failure to provide utility services.

Based on the evidence, I find that the tenant breached the fixed-term tenancy agreement by ending it before its full term. I therefore find that the landlord is entitled to a monetary award in the amount of \$4,740.00 as claimed for the loss of rental income for the months of December 2020 and January 2021.

I am satisfied with the evidence of the landlord that they took reasonable steps in order to mitigate their losses. I accept that the landlord advertised the rental unit on their website and through other public market sites. While I accept the evidence of the parties that the landlord did not highlight the rental unit as a featured property on their

website, I find that the measures taken were reasonable and, as stated above, it is not necessary that a landlord take all possible measures. I find that the measures taken by the landlord to be reasonable and proportional to the potential losses. I find that despite their best efforts the landlord incurred some rental income losses in the amount of \$4,740.00. As a result I issue a monetary award in the landlord's favour for that amount as against the tenant.

The parties agree that the landlord incurred cleaning costs of \$431.00 and the tenant testified that they agree to pay that amount. Accordingly, I issue a monetary award in that amount.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,171.00, allowing the landlord to recover their rental income losses, cleaning costs and filing fees and to retain the deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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 23, 2021

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Residential Tenancy Branch