



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE 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 order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on December 26, 2020. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on April 9, 2021. The tenant stated that the landlord was served with his submitted documentary evidence via Canada Post Registered Mail on March 25, 2021. The landlord disputed this claim stating that no evidence has been served. The tenant provided a Canada Post Customer Receipt Tracking Number as confirmation during the hearing (noted on the cover of this decision). The tenant stated that the address used was what was provided on the landlord's application for dispute. A review of the Canada Post Website shows that the package was received for processing on March 25, 2021 and successfully delivered on March 29, 2021. I find despite the landlord's argument that no evidence was served that the proof of service evidence provided by the tenant is conclusive and find that the landlord was properly served and is deemed served as per section 90 of the Act.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation and recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 15, 2020 on a fixed term tenancy until August 31, 2021 as per the submitted copy of the signed tenancy agreement dated August 28, 2020. The monthly rent was \$2,300.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,150.00 was paid.

The landlord seeks a monetary claim of \$2,650.00 which consists of:

\$2,300.00	Loss of Rent, December 2020	
\$250.00	Compensation	
	\$175.00	Cleaning
	\$75.00	Repair Towel Rack

The landlord stated that the tenant breached the fixed term of the tenancy agreement by ending it pre-maturely on November 30, 2020. The landlord stated that the fixed term tenancy was to end on August 31, 2021. The tenant argued that he had given notice to end the tenancy via email on October 30, 2020 to end the tenancy on November 30, 2020. The landlord confirmed the notice given by the tenant. The landlord stated that the unit was immediately advertised for rent but was not successfully re-rented on January 2021 for \$2,200.00 in monthly rent. The landlord seeks compensation of \$2,300.00 equal to the loss of rent for December 2020.

During the hearing discussions took place and the landlord stated that she wished to cancel the remaining portion of the landlord's monetary claim for \$250.00. The landlord

stated that the owner knows that because of COVID the situation is not ideal for anyone.

### 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.

In this case, both parties confirmed that the tenant gave notice to end the tenancy via email on October 30, 2020 for November 30, 2020.

The landlord provided undisputed direct evidence that the rental unit was immediately advertised for rent but was not successfully re-rented until January 2021 for a lower rent of \$2,200.00.

Residential Tenancy Branch Policy Guideline #3, Claims for Rent and Damages for Loss of Rent states in part,

**This guideline deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement.**

Section 44 of the *Residential Tenancy Act* and section 37 of the *Manufactured Home Park Tenancy Act* set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. **In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.**

**Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options.** These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention

to claim damages for loss of rent for the remainder of the term of the tenancy.

These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the *Act* or tenancy agreement. Whether or not the breach is fundamental depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach...

**The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.** As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of \$1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at \$50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the \$50.00 difference over the remaining 10 months of the original term. In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. If a month to month tenancy is ended for cause, even for a fundamental breach, there can be no claim for loss of rent for the subsequent month after the notice is effective, because a notice given by the tenant could have ended the tenancy at the same time.

**In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.** Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale...

In this case, it is clear based upon the undisputed affirmed evidence of the landlord that the tenant breached the fixed term tenancy by pre-maturely ending it on November 30, 2020 instead of the fixed term of August 31, 2020.

The landlord has stated that the rental unit was immediately advertised for rent but was not successful in re-renting it until January 2021. The landlord's monetary claim of \$2,300.00 has been established.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1,150.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$1,250.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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 26, 2021

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Residential Tenancy Branch