



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on December 16, 2020. The Landlord applied for a monetary order for unpaid rent, and to recover the filing fee paid for the application. The matter was set for a conference call.

Two Agents for the Landlord (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

The tenancy agreement recorded that this tenancy began on July 1, 2020, as a one-year fixed term tenancy. Rent in the amount of \$1,875.00 is to be paid by the first day of each month. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Tenant issued written notice to the Landlord on July 31, 2020, to end their tenancy early as of August 31, 2020. Both parties agreed that the Tenant moved out of the rental unit on August 31, 2020, in accordance with their written notice.

The Landlord testified that they added the Tenant's rental unit to their list of available units as soon as they received the Tenant's notice and that they updated their online ad to include the Tenant's style of the unit as available. The Landlord testified that they were unable to secure a new renter for the Tenant's rental unit until November 1, 2020. The Landlord is requesting the rent for October 2020, for this tenancy in the amount of \$1,875.00.

The Tenant testified that the Landlord failed to advertise their specific rental unit, so they should not be responsible for the additional month's rent.

The Landlord agreed that they do not list specific units in their advertisements, but that they do this so they do not have to update their online advertisement each time they rent a unit out. The Landlord testified that the Tenant's style of the unit was listed as available and shown to anyone inquiring about a unit of that size.

### Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

#### **Tenant's notice**

**45(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.

Based on the signed tenancy agreement, I find that the tenancy could not have ended in accordance with the *Act* until June 30, 2021. I find that the Tenant failed to comply with the *Act* when they issued notice to the Landlord to end the tenancy as of August 31, 2020.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

In this case, I find that the Tenant’s breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord and that the Landlord has provided sufficient evidence to prove the value of that loss and that they acted reasonably to minimize their damages or losses due to the Tenant’s breach.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,875.00 in unpaid rent for October 2020, for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Landlord a monetary order in the amount of \$1,975.00, consisting of \$1,875.00 in rent for October 2020, and \$100.00 in the recovery of the filing fee paid for their application for these proceedings.

Conclusion

I find for the Landlord under sections 26, 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$1,975.00**. The Landlord is provided with this Order in the above terms, and 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 26, 2021

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Residential Tenancy Branch