



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCL, MNRL, FFL**

### **Introduction**

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was accompanied by a support person who did not provide testimony.

Both parties agreed that the tenant was served with this application for dispute resolution via registered mail. I find that this application was served in accordance with section 89 of the *Act*. No service issues were raised by either party.

The parties provided or confirmed their email addresses during the hearing, and they also confirmed their understanding that the Decision would be emailed to both parties and any Orders sent to the appropriate party.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 11, 2018 and ended on August 15, 2020. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. The landlords reduced rent for the first three months of this tenancy to \$600.00 per month. A security deposit of \$600.00 was paid by the tenant to the landlords and was returned at the end of this tenancy. A written tenancy agreement was submitted for this application and was signed by both parties. The tenancy agreement is not on an Residential Tenancy Branch form and consists of one type written page.

The landlords testified that the tenant provided her notice to end tenancy via email on July 28, 2020 which was only two weeks before the tenant moved out. The landlords testified that since the tenant did not provide one full month's notice, the landlords are entitled to rent in the amount of \$1,100.00 for August 15, 2020 to September 14, 2020. The July 28, 2020 email was entered into evidence.

The tenant testified that she verbally told the landlords in May of 2020 that she planned to move out in August of 2020 and that the landlords did not ask her to provide written notice to end tenancy. The tenant testified that in July 2018 landlord L.C. told the tenant that she could withhold the tenant's security deposit because the tenant did not provide proper notice. The tenant testified that she then did some research online and found out that written notice was required, and so emailed the landlords her notice to end tenancy on July 28, 2020.

The landlords testified that around this time last year the tenant had told them verbally that she would likely be moving in with her employer for whom the tenant nannied and that her employer was moving in on August 27<sup>th</sup>. The landlords testified that they believed the tenant would be moving out on or after August 27<sup>th</sup>, 2020 until they received the July 28, 2020 email.

The landlords testified that they entered into a verbal agreement with the tenant to reduce the tenant's rent according to the following schedule in exchange for the tenant watering the landlord's large garden while the landlords were away for two weeks in August of 2020:

- April 15- May 14, 2020: \$300.00
- May 15- June 14, 2020: \$300.00
- June 15- July 14, 2020: \$200.00
- July 15- August 14, 2020: \$200.00

The landlords testified that after the tenant obtained the rent reduction, the tenant refused to water the garden in August of 2020. The landlords testified that the tenant originally agreed to pay back the rent reduction but only repaid \$200.00 and then refused to repay the remainder. The landlords did not enter into evidence any documentary evidence proving the terms of the above agreement. The landlords testified that they are seeking the return of the \$800.00 rent reduction granted to the tenant.

The landlords testified that because the tenant refused to water the garden while they were away, they had to hire two people to water the garden which cost them \$350.00. The landlords are seeking reimbursement for this cost from the tenant.

The tenant testified that because of COVID 19 her expenses increased, and she was having a difficult time paying her bills. The tenant testified that she asked the landlords to reduce her rent for a few months, as they had done when she first moved in. The tenant testified that the landlords agreed and reduced her rent as follows:

- April 15- May 14, 2020: \$300.00
- May 15- June 14, 2020: \$300.00
- June 15- July 14, 2020: \$200.00
- July 15- August 14, 2020: \$200.00

The tenant testified that the reduced rent had nothing to do with watering the garden and that over the course of the tenancy the tenant always watered the landlords' garden while the landlords were away and that her rent was never reduced for her services.

The tenant entered into evidence messages between the landlords and the tenant which show the tenant frequently watered the garden for the landlords. The tenant testified that she told the landlord that she could not water the garden in August 2020 because she was moving that month and had to pack and did not have the time to water the garden because it took several hours to do.

The tenant entered into evidence a message exchange between the parties dated July 23, 2020:

- Landlord L.C.:
    - Morning! [Tenant] can you please keep watering? We r coming and going so would appreciate it if we didn't have to water. There were pots on the east side of the garden what were wilting so I watered them last night. I will move them so the pot doesn't get do much sun. Thanks for your help. U must be getting excited about moving!
    - Those were plants out front. The ones with the water jugs will have to be topped up as the system is meant for smaller pots.
  - Tenant:
    - Moring [landlord L.C.]! I can help you watering some days, and not exactly like you want, i can do the tomatos every second day like they need IT with cans, but the rest of the garden I Will use the hose, sorry, with the moving I Will need more money to I Will work more, in fact this Saturday and Sunday I Will be working both days [emoji] so that means I have no time to cook so when i come from work I have to cook, pack and rest. So i can't water all the plants like you want because IT take me a lot of time. So if you need me to do the tomatos i can start from tomorrow
- [reproduced as written]

The tenant testified that after the above text message was sent landlord L.C. came to the subject rental property to talk to her and was very upset. The tenant testified that landlord L.C. told her that she should be grateful for how much they have helped her and that she owed them \$1,000.00.

The tenant testified that after landlord L.C. left she messaged her as follows:

Hello [landlord L.C.], this is how I see this: I love working in the garden, I have learned a lot there, I like to enjoy the things I do, that's why all the times you previously offered to pay me to do it, I did not accept. I like doing it because I enjoy it, I don't like doing it because I HAVE to do it. It was always a way to thank you for your help that you have give me.

I am very sorry for the misunderstanding on my part, I thought that lowering my rent was a favor that you were doing because of the situation that prevails in the world, not a transaction where my free time was compromised, (that in case of selling it to you I think that we would be even by now, because my free time is very valuable to me [emojis]).

I do not want you to feel that in some way I have abused your good will, it was just a misunderstanding on my party, so I just transferred you 200 dollars out of 1000, I only ask you for time to pay off the debt. [emoji]

With this situation I no longer feel comfortable or happy watering the garden or the tomatoes so I Will not going IT (said sorry to [J.] about that)....

The tenant testified that after she sent this message she returned the \$200.00 rent reduction granted for July 15-August 14, 2020. The tenant testified that as stated in the above message the landlords never told her the rent reduction was for watering the garden and that when landlord L.C. told her otherwise on July 23, 2020 she initially thought it was her misunderstanding but no longer believes so. The tenant testified that she believes the landlords changed their mind about the rent reduction because they were angry she would not help them water the garden, not because it was agreed upon.

The tenant testified that even if there was such an agreement, which she denies, she watered the garden from April to July 23, 2020 and returned the rent reduction from July 15, 2020 – August 14, 2020 so does not owe the landlords anything. Messages entered into evidence by the tenant confirm that she watered the garden prior to July 23, 2020.

The landlords testified that the rent reduction was to cover the two weeks in August that they were away, not to cover watering from April to July 2020.

### Analysis

Section 45(1) of the *Act* states that 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.

Section 45(4) of the *Act* states:

A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* state that in order to be effective, a notice to end a tenancy must be in writing.

The tenant testified that in May 2020 she provided the landlord with verbal notice to end tenancy in August of 2020. The landlords testified that the tenant provided verbal notice to end tenancy on August 27. I find that verbal notice does not meet the requirements of section 52 of the *Act* and is not valid. I find that it was the tenant's responsibility to provide proper notice to end tenancy.

I find that the tenant provided the landlords with written notice to end the tenancy via email on July 28, 2020. I find that the landlords were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act* with the tenant's notice to end tenancy on July 28, 2020 as they confirmed receipt of it on that date.

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline #5 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 *Act*, 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.

Residential Tenancy Policy Guideline # 3 states:

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.

In this case, contrary to section 45 of the *Act*, less than one month's written notice was provided to the landlords to end the tenancy. The earliest date the tenant was permitted to end the tenancy was September 14, 2020. I therefore find that the tenant owes the landlords \$1,100.00 in rent for the period of August 15- September 14, 2020.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The testimony of the parties on the terms of the rent reduction agreement (the "agreement") are divergent and neither party has documentary proof of the terms of the agreement. I find that the testimony of each party is equally probable as both versions of event could be true. As such, I find that the landlords have not proved on a balance of probabilities, the terms of the rent reduction, and so their claim fails. I therefore dismiss the landlords' claims for the return of the rent reduction and the cost of hiring people to water the garden.

As the landlord was partially successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I issue a Monetary Order to the landlords in the amount of \$1,200.00.

The landlords are 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 30, 2021

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Residential Tenancy Branch