



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

On January 14, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent and damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

### Preliminary Matter – Evidence

The Tenant acknowledged that he received the Landlord’s documentary evidence and raised no concerns regarding the service method or service timelines. As a result, I have accepted this documentary evidence for consideration.

The Tenant acknowledged that he did not send the Landlord the documentary evidence package that he submitted to the Residential Tenancy Branch on May 9, 2021.

Rules of Procedure 3.15 states that evidence that is intended to be relied on by the Respondent at the hearing should be served on the Applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the Respondent’s evidence must be received by the Applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

In this case, I find that the Tenant failed to serve the Applicant with his documentary evidence, in accordance with the Rules of Procedure 3.15. The Landlord requested that the Tenant’s evidence not be considered. As such, I find that the Tenant’s evidence will not be accepted for consideration during this hearing.

### Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the monetary claims, in accordance with section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on June 28, 2018 and continued as a month-to-month tenancy. The rent was \$2,200.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,100.00. The Tenant moved out of the rental unit on September 1, 2020.

The Landlord testified that the Tenant provided a written letter, dated August 1, 2020, to the management of the residential property that documented several complaints and advised that the Tenant would be moving out by September 1, 2020. The Landlord stated that the letter did not provide all of the specific terms for a proper notice to end tenancy and that the Landlord corresponded with the Tenant about providing proper notice if he wanted to end the tenancy. The Landlord did not provide a copy of the Tenant's letter or submit any documentary evidence related to the subsequent correspondence between the Landlord and the Tenant.

The Landlord stated that they attempted to communicate with the Tenant about September and October rent, but did not receive any replies. The Landlord stated they provided notice to enter the rental unit for October 21, 2020 and learned that the Tenant had moved out of the unit. The Landlord took the opportunity to complete a condition inspection of the unit. The Landlord did not submit any documentary evidence related to the correspondence attempts between the Landlord and the Tenant.

The Landlord stated that the rental unit was not properly cleaned; that several walls and doors required patching and painting; and, that the Tenant had left behind

miscellaneous personal belongings, garbage and furniture which required disposal. The Landlord submitted receipts for the cost incurred and is claiming a monetary loss of \$859.95.

The Landlord stated that the Tenant did not provide proper notice to end tenancy and, as a result, was going to claim a loss for both September and October 2020 rent. However, as the Landlord proceeded with her testimony, she amended her claim and has requested compensation for one month's rent; September 2020, in the amount of \$2,200.00.

The Landlord stated that they attempted to mitigate their losses by advertising the unit for rent via their own website and Craigslist. The Landlord testified that they began advertising during the first week of September 2020 but could not find a new tenant until November 1, 2020. The Landlord did not submit any documentary evidence in relation to their advertising efforts.

The Tenant testified that he submitted a letter to the management of the residential property on August 1, 2020 to advise them that he intended on moving out of the rental unit on September 1, 2020. He stated he dropped the letter into a mailbox for the Landlord, the same mailbox where he pays his rent.

The Tenant stated that he did not receive any correspondence from the Landlord and followed up with an email on August 21, 2020 advising that he would be moving out before September 1, 2020 and asked about a move out inspection and the balance of his security deposit. The Tenant said that the Landlord did not respond. The Tenant testified that the Landlord knew that he was moving out and that the rental unit was empty as of September 1, 2020. The Tenant does not agree that he owes any rent for September or October 2020 as he provided the Landlord notice to end the tenancy and they failed to correspond with him during his last month in the unit.

The Tenant acknowledged that he did not leave the rental unit in good condition and agreed with the Landlord's claim for damages.

### Analysis

*Residential Tenancy Policy Guideline 16* refers to compensation for damage or loss between parties in a tenancy.

"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. In order 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 the Landlord has claimed compensation for unpaid rent and for damages to the rental unit. The Tenant agreed that the Landlord’s claim for damages is accurate and as such, I find that the Landlord has established a monetary claim in the amount of \$859.95.

Section 45(1) of the Act authorizes a tenant to 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 day before the day in the month that rent is payable under the tenancy agreement.

In this case, both parties agreed that the Tenant did provide a form of notice to end the tenancy and that the correspondence was received by the Landlord in early August 2020. Pursuant to section 45(1) of the Act, the effective date of such a notice received in August 2020, could not be effective before September 30, 2020. As such, the Tenant would be responsible to pay the rent for the month of September 2020.

Before awarding the Landlord compensation for unpaid rent, I must consider whether the Landlord acted reasonably to minimize their loss of rent in September 2020.

I accept both the Tenant’s and the Landlord’s testimony that the Landlord received a letter from the Tenant in early August 2020 and in that letter, the Tenant advised that he would be moving out of the rental unit by September 1, 2020. The Landlord testified that they began to advertise the rental unit in early September 2020; however, did not provide any documentary evidence to support the dates, format or platform of which the advertising occurred, nor did the Landlord speak to any potential showings or correspondence with the Tenant.

I found the Landlord’s knowledge that the Tenant would be vacating the rental unit by September 1, 2020 did not complement the Landlord’s actions of sending emails to the Tenant about rent for September and October 2020 and subsequently waiting to enter the rental unit on October 21, 2020 to find the Tenant had already vacated the rental unit.

I find that if the Landlord knew the Tenant was unhappy and intended on vacating their rental unit by September 1, 2020, the Landlord could have begun advertising and showing the rental unit in early August 2020. Although the Landlord testified that they began advertising in September 2020, the Landlord has not submitted any documentary evidence to support that testimony. Based on the evidence before me, I find that the Landlord failed to provide sufficient evidence that they acted reasonably to mitigate their losses. As such, I dismiss the Landlord's claim for unpaid rent.

I find, overall, that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

The Landlord has established a monetary claim, in the amount of \$959.95, which includes \$859.95 in damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep \$959.95 of the security deposit in full satisfaction of their damages claim.

As the Tenant paid \$1,100.00 as a security deposit, I order the Landlord to return the balance of the security deposit to the Tenant, in the amount of \$140.05.

### Conclusion

I order the Landlord to return the balance of the Tenant's security deposit within 15 days of receiving this Decision. If the Landlord fails to do so, they may be at risk of owing the Tenant double the amount of the remaining security deposit.

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: May 18, 2021

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Residential Tenancy Branch