



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAPLE LEAF PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties participated in the teleconference. The landlord had an agent as their representative. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns.

The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?  
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

The landlord's agent testimony is as follows. The one-year fixed term tenancy began on March 1, 2020 but ended early on January 27, 2021. The monthly rent of \$1920.00, which includes storage locker and bike rack was due on the first of each month. The tenant paid a security deposit of \$937.50 which the landlord still holds. The agent testified that they are seeking \$430.62 in unpaid rent for April 2020 and \$937.50 in unpaid rent for January 2021. The agent is also seeking the loss of rent for February 2021 in the amount of \$1920.00 as the tenant ended the fixed term early and the landlord was unable to rent the unit again until April 1, 2021.

The agent testified that the tenant assisted in finding a person for the suite with the initials H.I. The agent testified that the tenant ran her own advertisement on Padmapper and H.I. contacted her about her unit. H.I. was looking for a place to move into by January 27, 2021. The tenant forwarded H.I.'s information to the landlord who in turn approved H.I. The property manager contacted the tenant to confirm that she was willing to move out by January 27, 2021 as per H.I. request; the tenant confirmed that she was agreeable. The agent testified that H.I. ultimately rented another unit in the building on a higher floor with a better view. The agent testified that H.I. was not restricted, bullied or pressured to take another unit instead of the subject unit. The agent testified that the landlord was acceding to the tenants' request to accept this person on the agreed term that she could move in on January 27, 2021. The agent testified that the tenant ended the contact prematurely and that she is liable for the loss of revenue for the month of February 2021.

The landlord is applying for the following:

1.	Unpaid April 2020 Rent	\$430.62
2.	Unpaid January 2021 Rent	937.50
3.	Loss of Revenue February	1920.00
4.	Filing Fee	100.00
5.		
6.	Less Deposit	-937.50
7.		
8.		
9.		
10.		
	Total	<b>\$2450.62</b>

The tenant gave the following testimony. The tenant testified that she incurred many costs for having to move out early. The tenant testified that the landlord has acted unethically and that she should be entitled to compensation for their actions. The tenant

testified that she arranged to get the new tenant and that H.I. was originally told she would be getting a rent incentive of one months free rent, but that was later withdrawn and only applied to the other unit that H.I. ultimately took. The tenant testified that she agrees with the landlords claim for unpaid rent for April 2020 and January 2021.

The tenant testified that she doesn't feel she should have to pay the loss of revenue for February 2021 as she found a suitable tenant, but that tenant was forced into taking another unit. The tenant feels that the landlord should compensate her for her moving costs, five days of rent as she gave up the unit on January 27, 2021, costs for this hearing, costs of renting another location five days early, and compensation for the stress of dealing with this hearing and the landlords breach of trust and unethical conduct.

### Analysis

At the outset of the hearing I explained in great detail that this was the landlord's application and that this decision was only going to address their claim. I also explained that the tenant was at liberty to file her own application if she wished to pursue a monetary order. The tenant stated that she understood but spent the majority of her opportunity discussing compensation that she felt she is owed. It is worth noting, the tenant was given 40 minutes of the 55 minute hearing to present her position, however the tenant spent almost the entirety of the time asking for a monetary award instead of addressing the landlords claim.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

### April 2020 Rent \$430.62 & January 2021 Rent \$937.50

The tenant acknowledged that she is responsible for these costs, accordingly; I find that the landlord is entitled to \$1368.12.

Loss of Revenue February 2021

I find that the landlord and tenant entered into a fixed term tenancy for the period from March 1, 2020 to February 28, 2021. Both parties signed the written tenancy agreement and a copy was provided for this hearing.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

*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.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenant ended the tenancy on January 27, 2021, prior to the end of the fixed term on February 28, 2021. I find that the tenant breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the Act to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I find that the landlord is entitled to the loss of rent for February 2021. The tenant submitted an application to the landlord of a party that had a very restrictive move in date, which the tenant accepted. The tenant posted the advertisement and forwarded the application to the landlord. The landlord approved that application. Ultimately, that tenant chose another unit leaving the landlord with a financial loss for the subject unit.

I find that the landlord acted reasonably and in accordance with the Act. I do not agree with the tenant that the landlord acted unethically or that there was a breach of trust. The tenant screened and accepted H.I.'s terms for move in. The landlord did not force the tenant to accept those terms or move out. Furthermore, the tenant did not accept or acknowledge that she ended the contract prematurely. Based on the above, I find that the landlord is entitled to \$1920.00. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$3388.12. I order that the landlord retain the \$937.50 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$2450.62. This order may be filed in the Small Claims 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: June 11, 2021

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Residential Tenancy Branch