



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OFTOB INVESTMENT CORP and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*") made on February 8, 2021. The Landlord applied for a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord's Agent (the "Landlord") attended the hearing and was affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by Canada Post registered mail on February 17, 2021, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days after they were mailed. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Landlord was advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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 unpaid rent?
- Is the Landlord entitled to retain the security deposit?
- 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 January 1, 2020, as a one-year and one-month fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of \$3,900.00 was to be paid by the first day of each month, and the Landlord had collected a \$1,950.00 security deposit and a \$1,950.00 pet damage deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the Tenants served them with written notice to end their tenancy on January 13, 2021, listing an effective end of tenancy date of January 31, 2021. The Landlord testified that the Tenants moved out of the rental unit in accordance with their notice on January 31, 2021. The Landlord submitted a copy of the Tenants' Notice to end tenancy into documentary evidence.

The Landlord testified that they are claiming for the rent for February 2021, in the amount of \$3,900.00, due to the Tenants' short notice to end their tenancy. When asked, the Landlord testified that the delayed advertising the rental unit as available, as the owner was considering selling the unit. The Landlord testified that they started advertising the rental unit as of January 31, 2021, after the owner decided not to list the unit for sale.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a one-year and one-month fixed term tenancy that beginning on January 1, 2020 and rolled into a month-to-month tenancy at the end of the initial fixed term, in accordance with the *Act*.

I accept the documentary evidence submitted by the Landlord, and I find that the Tenant served the Landlord with written notice, on January 13, 2021, to end their tenancy as of January 31, 2021. 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 and not less than one month after the date that the Landlord received the notice.

***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 when the Tenants served their written notice to end their tenancy, I find that this tenancy could not have ended in accordance with the *Act* until February 28, 2021. I find that the Tenants breached of section 45 of the *Act* when they issued short notice to the Landlord to end the tenancy as of January 31, 2021.

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 Tenants' 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. However, I find that the Landlord did not act reasonably to minimize their losses due to the Tenants' breach when they waited 19-days before the initiated attempts to re-rent the rental unit for February 2021.

I find that the Landlord was in breach of section 7(2) of the *Act* when they did not take reasonable steps to secure a new renter for February 1, 2021 after being notified that the Tenants had decided to end the tenancy with short notice. Therefore, I dismiss the Landlord's claim for the recovery of the loss of rental income for the month of February 2021.

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 not been successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Additionally, as I have dismissed the Landlord's claim, I order that the Landlord return the Tenants' security and pet damage deposits to the Tenants within 15 days of receiving this decision.

I grant the Tenants leave to apply for the return of double their security and pet damage deposits if the Landlord fails to return the deposits as ordered.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I order the Landlord to return the security and pet damage deposits for this tenancy to the Tenants within 15 days of receiving this decision.

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 8, 2021

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Residential Tenancy Branch