



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL-S, FFL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The agent RN attended for the landlord (“the landlord”). The tenants did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 21 minutes to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenants separately (hereafter “the tenant”) with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on April 1, 2021 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on April 6, 2021.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I accept the landlord’s testimony and documents. I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on April 6, 2021.

The landlord confirmed they were not recording the hearing. They also confirmed their email address to which their Decision may be sent.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

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

The landlord submitted a copy of the signed tenancy agreement. The landlord provided the following uncontradicted testimony as to the background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	Fixed term (September 30, 2020 to September 30, 2021)
Date of beginning	September 30, 2020
Date of ending	March 17, 2021
Monthly rent payable on 1 <sup>st</sup>	\$1,495.00
Security deposit	\$748.00
Pet deposit	\$747.00

Forwarding address provided	March 17, 2021
Date of landlord's Application	March 30, 2021

The tenant notified the landlord in writing on March 15, 2021 that they would vacate the unit at the end of April 30, 2021. The landlord did not accept the tenant's notice to leave the fixed term tenancy early. The landlord notified the tenant of the decision. The tenant moved out on March 17, 2021.

A condition inspection was conducted on moving in which indicated that the unit was in good condition in all material aspects. An inspection was conducted on moving out which indicated no damages. A copy of the signed reports was submitted.

The landlord testified to the efforts made to find a replacement tenant starting immediately after the tenant moved out. A new tenant was accepted in April 2021 for a move in date of May 2021.

The landlord requested one month's rent of \$1,495.00 for the lost rent for April 2021. The landlord requested authorization to apply the security deposit and pet deposit to the award.

The landlord withdrew the claim for reimbursement of the filing fee.

The landlord requested authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Total claim by landlord	\$1,495.00
(Less Security and pet deposit)	(\$1,495.00)
<b>TOTAL CLAIM</b>	<b>\$0.00</b>

### Analysis

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 an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

*. . .*

*67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

The landlord submitted well-prepared and comprehensive evidence. I find the landlord's evidence was credible.

I now consider each of the above tests in turn.

1. *Did the tenant fail to comply with Act, regulations, or tenancy agreement?*

Section 44(1) of the Act lists fourteen categories under which a tenancy may be ended, and references section 45 of the Act. Section 45 of the Act deals with a tenant's notice to end a tenancy, and reads, in its entirety, as follows:

*(1) 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.*

*(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.*

*(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

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

In this dispute, the tenancy was a fixed term tenancy, so section 45(2) applies. The tenant gave written notice to the landlord on March 15, 2021 and stated they would be moving out at the end of April 2021. When the tenant's notice was rejected, the tenant vacated on March 17, 2021.

In other words, the tenant ended the tenancy on a date that was earlier than the date specified in the tenancy agreement as the end of the tenancy.

Thus, I conclude that the tenant breached section 45(2)(b) of the Act by ending the tenancy early.

2. *Did the loss or damage result from non-compliance?*

Having found that the tenant breached the Act, I must next determine whether the landlord's loss resulted from that breach. This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

In this case, I find that but for the tenant's ending the tenancy as he did, that the landlord would not have suffered a loss of rent for April 2021.

3. *Has applicant proven amount or value of damage or loss?*

The monthly rent was \$1,495.00 as evidenced by the submitted tenancy agreement and the landlord's testimony. The landlord testified the unit was vacant the month of April 2021 and they incurred a loss of a full month's rent. The landlord also testified that the unit rented again beginning May 1, 2021.

The landlord claimed the loss of one month's rent.

I find that the landlord has proven the loss of rent for one month of \$1,495.00.

4. *Has the landlord done whatever is reasonable to minimize damage or loss?*

The landlord testified that he made efforts right away to find new tenants. The agent at the hearing testified that he is a property manager. The landlord was successful in April 2021 and the unit was occupied on May 1, 2021.

The landlord stated that it is unreasonable to expect the landlord to find a new tenant for April 1, 2021 when the tenant gave notice on March 15, 2021. That having been said, I find that reasonable efforts were made in a timely manner to find a replacement tenant.

*Conclusion*

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all four criteria in establishing that he is entitled to compensation in the amount claimed.

Further to section 72, the landlord is authorized to apply the security deposit to the award leaving no balance owing by the tenant. My award to the landlord is summarized as follows:

ITEM	AMOUNT
Total claim by landlord	\$1,495.00
(Less security and pet deposit)	(\$1,495.00)
<b>TOTAL CLAIM</b>	<b>\$0.00</b>

Conclusion

The landlord is authorized to apply the security and pet deposit to the award. No balance is owing the landlord by the tenant.

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: August 27, 2021

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Residential Tenancy Branch