



# Dispute Resolution Services

Page: 1

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, FFL, MNDCL

### 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.

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 explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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 agent for the landlord gave the following testimony. The one-year fixed term tenancy began on September 23, 2020 and was to end on September 30, 2021, however the tenants moved out early on February 28, 2021. The tenants were obligated to pay \$2995.00 per month in rent on the first of each month. The tenants paid a security deposit of \$1497.50 which the landlord still holds. The agent testified that as a result of the tenants breaking the lease, the landlord incurred a loss of one months rent for March 2021 in the amount of \$2995.00. The agent testified that the unit required professional carpet cleaning which cost the landlord \$280.35 which the landlord wants the tenants to pay for. The landlord testified that they were able to rent the unit for April 1, 2021.

The landlord is seeking the following:

|     |                         |                  |
|-----|-------------------------|------------------|
| 1.  | Loss of March 2021 Rent | \$2995.00        |
| 2.  | Carpet Cleaning         | 280.35           |
| 3.  | Filing Fee              | 100.00           |
| 4.  | Minus Deposit           | -1497.50         |
| 5.  |                         |                  |
| 6.  |                         |                  |
| 7.  |                         |                  |
| 8.  |                         |                  |
| 9.  |                         |                  |
| 10. |                         |                  |
|     | Total                   | <b>\$1877.85</b> |

CS gave testimony on behalf of the tenants. CS testified that he feels that he and ET went above and beyond to try to find a new tenant for the landlord. CS testified that he was never informed about any issues with the carpet until they were served notice of

this hearing. CS testified that they gave two months notice that they would be vacating, but the landlord did little to rent the unit. CS testified that the landlord should not be entitled to any of the costs as claimed.

### Analysis

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.

### Rent Loss

I find that the landlord and tenants entered into a fixed term tenancy for the period from September 23, 2020 to September 30, 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 tenants 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 tenants ended the tenancy on February 28, 2021, prior to the end of the fixed term on September 30, 2021. I find that the tenants 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 dismiss the landlord's application for March 2021 rent loss of \$2995.00, without leave to reapply. I find that the landlord failed to provide sufficient documentary evidence including copies of rent advertisements, to show when it was advertised for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit.

### Carpet Cleaning

During the hearing the tenant advised that they had not been given any indication that there were issues with the carpet until being served notice of this hearing. The agent testified that if there isn't sufficient evidence to be successful, she would withdraw the claim. I find that there is insufficient evidence to show that the carpets required additional cleaning after the tenants already had them cleaned, accordingly; I dismiss this portion of the application.

The landlord has not been successful in their application and as a result, must return the security deposit of \$1497.50 to the tenants.

### Conclusion

I order that the landlord return the \$1497.50 security deposit to the tenants. I grant the tenants an order under section 67 for the balance due of \$1497.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

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 05, 2021

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Residential Tenancy Branch