



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for liquidated damages?
- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** (hereafter called the landlord) testified that the parties entered into a tenancy agreement for a fixed term to commence on February 1, 2021 and

ending on January 31, 2022 thereafter reverting to a month-to-month tenancy. Rent in the amount of \$3,000.00 was payable on the 1<sup>st</sup> day of each month. At the end of January, 2021 the landlord collected a security deposit from the tenant in the amount of \$1,500.00. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that the tenant never moved in, but changed his mind during the move-in condition inspection and asked the landlord to sign a document stating that if there were any deficiencies the tenant could break the lease. However, it was a brand new condominium and there were no deficiencies and the landlord did not agree to sign the document.

The tenancy agreement provides for liquidated damages in the amount of \$1,500.00 and states: "If the tenant vacates prior to expiration of Lease the tenant will be responsible for liquidated damages of \$1,500.00. This amount does not include loss of rent. The Landlord has a duty to mitigate loss by acting in a prompt manner to re rent the premise."

On February 1, 2021 the landlord advertised the rental unit on Craigslist. Another person who had viewed the rental unit previously told the landlord that she had given notice to end her tenancy at the end of January. The landlord called her on February 1 advising that the unit was available again and asked if she was interested. The rental unit was re-rented to her for a tenancy to begin on March 1, 2021, and a copy of that tenancy agreement has been provided for this hearing.

The landlord has not received the tenant's forwarding address in writing. The landlord served the Hearing Package and evidence to the tenant at the address indicated on the Application for Tenancy form, which has been provided for this hearing.

The landlord claims \$3,000.00 for loss of rental revenue and \$1,500.00 for liquidated damages and recovery of the \$100.00 filing fee.

**The tenant** testified that he spoke with the landlord at the end of January, and the parties signed some paperwork. On day 2, the tenant gave the landlord a security deposit in the lobby of the complex. He was told there was a process and the tenant would have to sign more paperwork, step-by-step.

A few days later the tenant went to the suite to look again for damages and to ensure everything worked. However there were water stains on the ceiling in 3 places, and the landlord said they would be repaired and the tenant would receive a reduction in rent if

the repairs took longer than February. The rent would be pro-rated by days and the tenant agreed.

Then the landlord said it was fixed, prior to February and mentioned procedures. The tenant asked what caused the water stains but the tenant didn't like the landlord's attitude. The tenant asked the landlord to sign an amendment saying that if there were any further stains within 60 days the tenant could move out. The landlord told the tenant to talk to the building manager because he didn't know, and was raising his voice. That's the landlord's job, and the tenant didn't want to deal with him.

The tenant attempted to file an Application for Dispute Resolution for recovery of the security deposit, but was unable to get through the automated system.

The landlord had the tenant's address all along, it is in the Application for Tenancy form that the landlord has provided as evidence for this hearing. It is actually a post office box and that's where the landlord served the tenant with documentation for this hearing.

### Analysis

Whether or not the landlord had an attitude problem is not the issue. The parties entered into a written agreement for a fixed term tenancy and the tenant did not move in. The tenancy agreement is a contract and both parties are required to comply with its terms. There are other legal ways to deal with repairs required.

In the circumstances, I find that the landlord has lost revenue as a result of the tenant's failure to comply with the tenancy agreement, and the landlord is entitled to recover one month's rent, or \$3,000.00.

The tenancy agreement clearly has a liquidated damages clause, and I find that the landlord is entitled to the \$1,500.00 in liquidated damages.

The *Act* also requires a landlord to return a security deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant.

In this case, the landlord testified that he never received a forwarding address in writing, but also testified that the address of the tenant on the Application for Tenancy form, provided by the landlord as evidence for this hearing, is the address that the landlord

served the tenant with the Hearing Package and evidence for this hearing. The caption for that evidence states: "tenant application shows his current address." The tenant testified that the address is a post office box and is still his address, and the landlord did receive it in writing.

I find that the landlord had the tenant's forwarding address in writing and received it on January 16, 2021. I also find that the tenancy ended effectively on February 28, 2021. The landlord made the Application for Dispute Resolution on June 7, 2021, well after the 15 day period. Therefore, I find that the landlord is required to repay double the amount.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord currently holds a security deposit in the amount of \$1,500.00, and double that amount is \$3,000.00. I order that the landlord keep it in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant for the difference of \$1,600.00 (\$3,000.00 rent + \$1,500.00 liquidated damages + \$100.00 filing fee = \$4,600.00 - \$3,000.00 security deposit = \$1,600.00).

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,600.00.

This order is final and binding and may be enforced.

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: November 12, 2021

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Residential Tenancy Branch