



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNRL-S MNDCL-S FFL MNSDS-DR FFT

### **Introduction**

The landlord seeks compensation against their former tenants pursuant to section 67 of the *Residential Tenancy Act* ("Act"). By way of cross application, the tenants seek compensation (that is, the return of their security deposit) pursuant to section 67 of the Act. Both parties seek to recover the cost of their application filing fees.

Both parties attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained. It should be noted that I corrected the legal name of the landlord and this is reflected in the style of cause.

### **Issues**

Whether either party is entitled to compensation.

### **Background and Evidence**

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on December 21, 2020 and ended on August 31, 2021. Monthly rent was \$3,490.00 and the tenants paid a \$1,745.00 security deposit. A copy of the written tenancy agreement was in evidence. This was a fixed-term tenancy.

On July 21, 2021 the tenants gave written notice to the landlord to end the tenancy effective August 31, 2021. In the notice, which is in the form of a one-page letter, the tenants offer to pay the landlord liquidated damages in the amount of \$3,490.00. The specific sentence in which this offer was made reads as follows: "We would like to offer you one month's rent, \$3,490CAD, as liquidated damages."

Having not received any acceptance to this offer, the tenants later sent to the landlord's agent a *Mutual Agreement to End a Tenancy* (the "Mutual Agreement"). Both the tenants and the landlord's agent signed the Mutual Agreement.

The landlord's agent testified that the tenants never kept their promise of paying the liquidated damages amount, and they now seek to recover the promised amount. The tenants, however, argued that because they never received any acknowledgment, acceptance, or even mention of the offer, they considered that their offer had not been accepted. Moreover, they sought to enter into the Mutual Agreement as a means of protecting their interests going forward. It was the tenants' position that the Mutual Agreement ought to void any previous arrangement or agreement not yet solidified.

The landlord's agent argued that the tenants' actions of quickly moving toward putting the Mutual Agreement into effect were deceptive in nature.

While the landlord provided a copy of the tenants' notice to end tenancy (in which the offer to pay liquidated damages was included), the landlord did not provide any documentary evidence of the landlord or their agent of having accepted the offer.

In rebuttal evidence, however, the tenants provided a copy of an email communication. On July 29, 2021, there is an email in which the landlord's agent (or someone working for the landlord) sent the signed Mutual Agreement to the tenants. On September 8, 2021 (a full month and a half after the tenants made the offer to pay liquidated damages) the landlord's CFO and COO writes as follows:

As per your proposal to pay the rent of Sept 2021 to your landlord to cover the loss of the rental income due to you breaking the lease prior to the end of your fixed tenancy agreement.

Your landlord agreed with your offer. We are holding your security deposit, if you wish we can use this amount towards half of rent of Sept.

The landlord also seeks \$1,745.00 to cover a 15-day loss of rent from September 1 to September 15, 2021. The landlord's agent testified that they took immediate steps to start listing the rental unit and find new tenants after they received the tenants' notice to end tenancy. It was not until mid-September 2021 that a new tenant took possession.

Last, the landlord seeks \$840.00 for agent fees that the landlord incurred in their agent's efforts in placing a new tenant. An invoice for this amount was in evidence.

## Analysis

### **A. Landlord's Claim for Unpaid Liquidated Damages**

It is a basic element of contract law that every contract requires both an offer and acceptance. In this dispute, the tenants' offer to pay \$3,490.00 in compensation was embedded within their notice to end tenancy.

The evidence before me proves that the landlord accepted the tenants' notice to end tenancy, but there is no evidence before me to find that, despite what the landlord's COO and CFO later says, the landlord ever accepted the tenants' offer. Indeed, it was not until *after* the tenancy had ended that the landlord's agent (property management company) gave any indication of the landlord having accepted the tenants' previous offer. The communication of the COO merely referenced an earlier acceptance of the offer, but there is no evidence before me of actual acceptance.

While the tenants argued that the Mutual Agreement to End a Tenancy effectively put an end to any previous offer that might have still been on the table, I respectfully disagree. What ended the previous offer was the landlord's lack of acceptance of that offer.

In any event, 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 not met the onus of proving their claim for compensation. It is important to point out that while the tenants offered to compensate the landlord, the landlord never provided any acceptance of this offer. Further, the landlord has not proven that the tenants breached either the Act or the tenancy agreement by which compensation might flow.

Accordingly, this aspect of the landlord's application is dismissed without leave to reapply,

### **B. Landlord's Claim for 15 Days of Rent Loss**

The tenants' gave notice to end their fixed-term tenancy before the tenancy had expired. Ordinarily, a landlord would be entitled to compensation for any loss of future rent when such a notice to end a fixed-term tenancy is given. However, in this dispute, the landlord signed the Mutual Agreement to end the tenancy on August 31, 2021. This method of ending a tenancy is permitted under section 44(1)(c) of the Act.

By agreeing in writing that the tenancy would end on August 31, 2021, the landlord forgoes any claim for loss of rent after the tenancy ended. That the landlord was unable to find a tenant to take possession on September 1 is through no fault or breach of the Act by the tenants, and the tenants cannot therefore be held liable for any such loss.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I must find on a balance of probabilities that the landlord has not discharged its onus of proving that they are entitled to compensation in respect of this aspect of their application. This claim is dismissed, without leave to reapply.

### **C. Landlord's Claim for Agent Fees**

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

What is absent from the landlord's application is any evidence that the tenants breached the Act which might give rise to a claim for compensation related to the cost of the landlord having to hire an agent. The tenants gave notice to end tenancy, which was accepted by the landlord's agent, and then the parties subsequently executed a *Mutual Agreement to End a Tenancy*, which is permitted under the Act. Thus, I am not persuaded that any breach of the Act or of the tenancy agreement thus occurred that might give rise to a claim for compensation for agent fees. As such, this aspect of the landlord's application must be dismissed without leave to reapply.

### **D. Landlord's Claim for Application Filing Fee**

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord was not successful in their application their claim to recover the cost of the application filing fee is dismissed without leave.

### **E. Tenants' Claim for Return of Security Deposit**

Having dismissed the landlord's application in its entirety, it is my finding that the tenants are entitled to the return of their security deposit in the amount of \$1,745.00.

## **F. Tenant's Claim for Application Filing Fee**

Pursuant to section 72 of the Act it is also my finding that the tenants are entitled to the cost of filing their application, in the amount of \$100.00. In total, the tenants are awarded \$1,845.00.

## **Conclusion**

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

The tenants' application is granted. The landlord is hereby ordered under section 67 of the Act to pay to the tenants the amount of \$1,845.00 within 15 days of receiving a copy of this decision.

To give effect to this order the tenants are granted a monetary order, which is issued to the tenants in conjunction with this decision.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 17, 2022

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Residential Tenancy Branch