



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Keller Williams Elite Realty and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord and tenant AT attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. AT said his father would not be attending the hearing.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters-

The tenant requested an adjournment of the hearing, based on his assertion that they had just received the landlord's evidence a week prior to the hearing and did not have time to prepare a response.

I accept the tenant's submissions, as the bulk of the landlord's evidence was uploaded to the RTB online portal on January 6, 2022.

I questioned the tenant about what they might want to submit and informed him that I would adjourn the hearing if necessary. However, I proceeded with the hearing on the parties' affirmed oral evidence.

At the conclusion of the hearing, I found it was not necessary to adjourn, due to the parties' testimony at the hearing. The central point of the landlord's application was undisputed.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants and recovery of the filing fee?

#### Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of August 1, 2019, for a fixed term through June 30, 2020, monthly rent of \$2,200, due on the 1<sup>st</sup> day of the month, and a security deposit of \$1,100 being paid by the tenants to the landlord. The tenancy continued on a month-to-month basis after the fixed-term.

The landlord retained the tenants' security deposit, having made this claim against it.

The tenancy ended on or about June 30, 2021, when the tenants vacated the rental unit.

The agent said that the landlord received the tenants' emailed notice to vacate on June 2, 2021, although it was sent at 9:59 pm on June 1, 2021, for a move-out date of the end of June 2021. The landlord submitted further that the tenants did not sign their notice to vacate.

Filed into evidence with their application was a copy of the tenants' notice and the landlord's response.

The landlord submitted that due to the late notice, they were unable to find new tenants for the month following, which caused a loss of rent revenue for July, 2021.

The landlord's monetary claim is \$1,100, or ½ of the monthly rent.

In response, the tenant agreed that they provided the notice to vacate on June 1, 2021, by email.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, Residential Tenancy Regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Under section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenants wanted to end the tenancy by June 30, 2021, the latest day the tenants could provide a signed, written notice to end the tenancy was May 31, 2021.

Additionally, I find the tenants did not serve a signed, written notice by the approved methods under section 88 of the Act, when it was sent by email.

By giving insufficient notice afterhours on June 1, 2021, received by the landlord on June 2, 2021, the tenants are obligated under the Act to pay the monthly rent for July 2021, and they did not.

I therefore find the landlord submitted sufficient evidence that the tenants failed to give a proper written notice that they were vacating, and that the said insufficient notice caused the landlord to suffer a loss of rent revenue for the following month of July 2021.

The landlord is seeking only ½ month's rent, however, and I find the landlord is entitled to a monetary award of \$1,100, as claimed.

As the landlord was successful, I grant the landlord recovery of their filing fee of \$100.

The landlord applied to keep the tenant's security deposit and I allow the landlord's request to retain the security deposit in partial satisfaction of their monetary award.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$100 under the following terms:

ITEM	AMOUNT
1. Loss of rent for July 2021	\$1,100.00
2. Filing fee	\$100.00
3. <i>Less tenants' security deposit</i>	<i>-\$1,100.00</i>
<b>TOTAL MONETARY ORDER</b>	<b>\$100</b>

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 28, 2022

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Residential Tenancy Branch