



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, MNDCL, FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants, landlord E.H. and landlord M.L.'s agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants called witness N.S. who provided affirmed testimony.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

### Preliminary Issue- Service

Both parties agree that the landlords served the tenants with the landlords' application for dispute resolution via email. The tenants testified that they received the landlords'

application on October 1, 2021. I find that the tenants were sufficiently served for the purpose of this *Act*, with landlord's application for dispute resolution, pursuant to section 71 of the *Act* because receipt was confirmed.

Both parties agree that they were each served with the other's evidence. I find that both parties were sufficiently served for the purpose of this *Act*, with the other's evidence, pursuant to section 71 of the *Act* because both parties confirmed service.

Both parties confirmed their email addresses for service of this decision and order.

#### Preliminary Issue- Naming of landlord

Both parties agree that only landlord M.L. is listed as a landlord on the tenancy agreement. The tenants testified that despite this, they had less and less contact with landlord M.L. regarding the property and increasing contact with E.H.

Landlord E.H. testified that he looks after the property and could be called a property manager. Agent A.M. testified that landlord E.H. has most of the contact with the tenants and is an agent of the landlord.

Section 1 of the *Act* defines landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d)a former landlord, when the context requires this;

Based on the testimony of both parties, I find that E.H. is an agent of M.L., who exercises the powers of the landlord under the *Act* and is the primary contact with the tenants. I find that an agent meets the definition of landlord as set out in section 1 of the *Act*. I therefore find that E.H. was properly named as a landlord.

### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

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

Both parties agree that this tenancy began on November 1, 2020. The agent testified that the tenants moved out on September 1, 2021. The tenants testified that they moved out on August 31, 2021 but the landlord was not available until September 1, 2021 to receive the keys. The above testimony was not disputed by landlord E.H. or the agent.

Both parties agreed that rent in the amount of \$1,650.00 was due on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that this was originally a one-year fixed term tenancy set to end on October 31, 2021. Both parties agree that on August 16, 2021, via email, the tenants provided landlord M.L. notice to end tenancy effective October 1, 2021. The August 16, 2021 letter was entered, the relevant portions state:

This letter serves as written notice to end our tenancy at the address listed above. The last day of my tenancy will be October 1, 2021, the year mark of our tenancy agreement. On inspection of the Tenancy Agreement, it clearly states that Clause 2 "The landlord will keep the rented premises in good state of repair" and throughout the year of tenancy we had to deal with floorboards that are separating (resulting in multiple cuts), rat traps that were left on the kitchen counters and never checked on or removed, the outdoor staircase deteriorating throughout our tenancy, and the front closet door falling off resulting in an injury and was never fixed. There was an additional ongoing issue with the furnace that left us without heat for majority of the winter months, which was very soon after we moved in. Finally, when we reached out to have the flooring fixed because of the injury and discomfort, we were told fixing the floor would not occur, and when [landlord E.H.] entered the suite on July 30th at 10:25pm he said a potential reason was us being "big and tall" whereas the last tenants in to rent the suite were "small". These comments have deeply offended us and created an uncomfortable feeling while being in our home. For these reasons, we will be vacating the suite.

Section 45(1) of the Residential Tenancy Act (RTA) states: (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 the in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

....

The agent testified that after receiving the August 16, 2021 email from the tenant, landlord M.L. started advertising the subject rental property for rent, available for October 1, 2021. The agent entered into evidence a screen shot of landlord M.L.'s email inbox which shows that a craigslist posing for the subject rental property was posted on August 18, 2021 and landlord M.L. responded to several queries regarding same.

Both parties agree that at the end of August 2021 the tenants texted landlord M.L. advising her that they were moving out before September 1, 2021. The landlords

entered in evidence a text message exchange between landlord M.L. and the tenants dated August 30, 2021 which states:

- Tenant C.B.- Yes however, due to recent events we have to inform you that we will be leaving the residence before the 1<sup>st</sup>. We can meet you and give you back the keys tomorrow if you're available or we can leave them in the suite for you. Please let us know what works best. Thank you!

Landlord E.H. testified that after landlord M.L. received the above text message, he immediately started marketing the subject rental property for rent and started showing the subject rental property to prospective tenants on September 5, 2021. Landlord E.H. entered into evidence a handwritten log noting the date and times of showings at the subject rental property. The log states that landlord E.H. showed several groups the subject rental property on September 5, 12, 16, 19, 23, and 26 of 2021.

Landlord E.H. testified that a new rental contract was signed for the subject rental property on the second or third week of September 2021 for a tenancy starting on October 1, 2021. Landlord E.H. testified that the new tenancy agreement was for rent in the amount of \$1650.00 per month.

The agent testified that the tenants' short notice in ending their fixed term tenancy resulted in the loss of rent for the month of September 2021. The agent testified that the landlords were not able to find a tenant to move in before October 1, 2021.

The tenants testified that they ended the tenancy early because of maintenance issues with the house and due to comments they allege landlord E.H. made about their height and weight. The tenants testified that the combination of the maintenance issues, which they allege the landlords did not address, and landlord E.H.'s comments, created a hostile and uncomfortable environment and that they were no longer comfortable living in the suite. The tenants testified that due to the above, they decided to move out of the subject rental property before October 1, 2021.

The tenants testified that prior to the August 16, 2021 letter to end tenancy, they did not provide the landlord with written notification that:

- any of the alleged maintenance or conduct issues constituted a material breach of their tenancy, or
- that if the breaches were not rectified within a reasonable period of time, that the tenants would end their fixed term tenancy early.

## Analysis

Section 45 of the *Act* sets out when and how a tenant may end a tenancy. Section 45(1), quoted by the tenants in their August 16, 2021 letter, pertains to periodic, or month to month tenancies. The tenancy in question, was a fixed term tenancy, and so, section 45(1) of the *Act* does not apply.

Section 45(2) of the *Act* states that 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.

Pursuant to section 45(2), the earliest date the tenants could have ended their tenancy was October 31, 2021.

Section 45(3) of the *Act* states that 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.

Residential Tenancy Policy Guideline 8 (PG #8) states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that the tenants did not provide the landlords with a breach letter meeting the requirements set out above in PG #8, before providing their notice to end tenancy dated August 16, 2021 or before providing their revised notice to end tenancy text dated August 30, 2021. The tenants were therefore not entitled to break their fixed term tenancy early and therefore breached section 45(2) of the *Act*.

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

Policy Guideline 3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In this case, the tenants ended a one-year fixed term tenancy early; thereby decreasing

the rental income that the landlords were to receive under the tenancy agreement. Pursuant to section 7, the tenants are required to compensate the landlord for that loss of rental income. However, the landlords also have a duty to minimize that loss of rental income by re-renting the unit at a reasonably economic rate as soon as possible.

I find that the landlords have proved that shortly after receiving both notices to end tenancy, the subject rental property was advertised and that the landlords diligently pursued the finding of new tenants, as evidenced from the plethora of showings listed in landlord E.H.'s log and the emails from craigslist. I find that the landlords mitigated their loss by quickly advertising the subject rental property for rent and in showing the subject rental property for rent.

I find that the landlords have proved that they suffered a loss of rental income for the month of September 2021 caused by the tenants' breach of section 45(2) of the *Act*. Pursuant to section 7 of the *Act*, I award the landlords a monetary Order for \$1,650.00.

As the landlords were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlords in the amount of \$1,750.00.

The landlords are provided with this Order in the above terms and the tenants 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*.

Dated: May 17, 2022

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Residential Tenancy Branch