



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FFL

### 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 landlord's testimony is as follows. The tenancy began on January 1, 2019 and ended on June 30, 2021. The monthly rent of \$2000.00 was due on the first day of the month. The tenant paid a security deposit of \$937.50 at the outset of the tenancy which the landlord still holds. The landlord testified that the tenants lost their job in the casino due to Covid-19. The landlord testified that the tenants did not pay the rent for April 2021 or June 2021. The landlord testified that on June 30, 2021 the tenant sent him a text message stating "we're out", and that they had moved. The landlord seeks the unpaid rent for April and June and the loss of revenue for July 2021 for lack of notice.

The tenant gave the following testimony. The tenant testified that the landlord was unwilling to give an extension for time to pay the rent. The tenant testified that Covid-19 greatly impacted his work and that he was having difficulty getting a new place or employment. The tenant testified that the landlord forced him out on June 30, 2021 by not giving an extension of time to pay and therefore should not be responsible for a third month of unpaid rent. The tenant submits that only two months rent is payable to the landlord.

### 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

Subsection 45(1) of the Act sets out how a tenant may end a fixed term tenancy:

#### **Tenant's notice**

**45** (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 in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenant states that the landlord ended the tenancy. The tenant did not provide sufficient evidence of that allegation. The tenant did not provide a letter showing that he gave the landlord proper notice to end the tenancy; as a result, the landlord ended up having an empty unit on June 30, 2021 and no opportunity to rent it for July 1, 2021. Based on the documentation before me, the testimony of both parties, I find that the tenant is responsible for two months of unpaid rent along with one months loss of revenue for not giving proper notice to end the tenancy, accordingly; the landlord is entitled to \$6000.00.

The landlord is also entitled to the recovery of the \$100.00 filing fee for this application.

### Conclusion

The landlord has established a claim for \$6100.00. I order that the landlord retain the \$937.50 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$5162.50. This order may be filed in the Small Claims 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: June 07, 2022

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Residential Tenancy Branch