



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NU STREAM REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

On December 3, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

A.W. attended the hearing as an agent for the Landlord. The Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

A.W. advised that the Notice of Hearing and evidence package was served to the Tenant by email on December 7, 2021. However, he did not serve the Tenant the new tenancy agreement that was submitted as documentary evidence. The Tenant confirmed that he received the Notice of Hearing and evidence package and that he did not have a position on how it was served. Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing and evidence package. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord’s evidence, with the exception of the new tenancy agreement, and will consider it when rendering this Decision. The new tenancy agreement will be excluded and not considered when rendering this Decision.

The Tenant advised that he served his evidence to the Landlord by email on June 28, 2022. A.W. confirmed that this evidence was received, and he did not have a position on when or how it was served. Despite this evidence being served late, and not in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, as A.W. did not bring up any concerns with when or how it was served, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2021 as a fixed term tenancy of one year, ending on October 31, 2022. However, the tenancy ended early, when the Tenant gave up vacant possession of the rental unit on December 1, 2021. Rent was established at \$2,500.00 per month and was due on the first day of each month. A security deposit of \$1,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The parties also agreed that the Tenant never provided his forwarding address in writing.

A.W. advised that the Landlord is seeking compensation in the amount of **\$2,500.00** for the loss of rent for December 2021 as the Landlord was unable to find a new tenant after the Tenant broke his fixed term tenancy early. He stated that the Tenant never provided any written notice to end the tenancy, but informed him verbally in mid-November that he would be ending his tenancy on December 1, 2021. He stated that when he received the keys back on December 1, 2021, he immediately posted the rental unit as available on the company's website and online, and managed to rent it for January 1, 2022.

The Tenant made submissions with respect to a problem that he had with the Landlord's handyman that caused him to be concerned for his safety. He stated that he texted the Landlord on November 15, 2021, advising that he would be ending the tenancy. However, he never provided the Landlord with any written document advising that it was his belief that this person's actions were a breach of a material term of the tenancy and that, if not corrected within a reasonable period of time, he was permitted to end the fixed term tenancy early.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, as the Tenant never provided a forwarding address in writing, I find that there was no timeframe for the Landlord to comply with. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for compensation in the amount of \$2,500.00 for rental loss, there is no dispute that the parties entered into a fixed term tenancy agreement from November 1, 2021 for a period of one year, ending on October 31, 2022. Yet, the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit on December 1, 2021.

Sections 44 and 45 of the *Act* outline how a tenancy can end.

Moreover, I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the undisputed evidence before me, I am satisfied that the Tenant ended the tenancy contrary to the *Act*, as there was no breach of a material term of the tenancy that was established, and the Tenant did not inform the Landlord that it was his belief that there was even a breach of a material term of the tenancy. As such, I am not satisfied that the Tenant was permitted to end the tenancy, in the manner that he did, without consequence. As the Tenant provided the Landlord with minimal time to be able to mitigate this loss and find a new tenant, I am satisfied that the Tenant is negligent in this instance.

Ultimately, I am satisfied that the Landlord made reasonable efforts to effectively mitigate this loss and re-rent the unit as quickly as possible. Therefore, I am satisfied that the Tenant is responsible for December 2021 rent. As a result, I grant the Landlord a monetary award in the amount of **\$2,500.00** to satisfy this claim.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in satisfaction of this claim.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlord**

December 2021 rental loss	\$2,500.00
Filing fee	\$100.00
Security deposit	-\$1,250.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,350.00</b>

#### Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,350.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant 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: July 5, 2022

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Residential Tenancy Branch