



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY 21 AMOS REALTY PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution on January 15, 2022 seeking an order to recover monetary loss for unpaid rent. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on November 24, 2020 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing, I explained the process and provided both parties the opportunity to ask questions.

The Landlord confirmed they provided notice of this hearing and their prepared evidence to the Tenant via registered mail. The Tenant verified they received this information. Reciprocally, the Tenant advised they sent their prepared evidence to the Landlord via registered mail, which the Landlord confirmed. On this basis, the hearing proceeded.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms therein. The tenant and landlord signed the agreement on September 16, 2021. The tenancy started on September 18, 2021 for a fixed-term ending on August 31, 2022. The monthly rent is provided in section 3 of the agreement. This states the “tenant will pay the rent of \$1,200 each month” on the first of each month. The Tenant paid a security deposit amount of \$600.

The tenancy ended by the Tenant giving their notice to end on November 26, 2021. This was a letter wherein they stated they would move out by January 1, 2022. They noted this was 35 days in advance, and “As per a monthly lease agreement, this letter fulfills the 30-day notice requirement.” A note appears in the Landlord’s evidence, showing an internal memo “note to file” when the Landlord’s family member accompanied them to the office, stated the Tenant was dealing with worsening dementia with the Tenant needing full-time living assistance.

In their Application, the Landlord’s claim for compensation was \$9,600 for unpaid rent. This was for the rent owing until the end of the tenancy agreement, as “a fixed term one year lease eight months short of the termination date.”

In the hearing, the Landlord clarified that the amount they seek is a single month’s rent amount, for \$1,200. They obtained new tenants for this rental unit as per February 2022.

A third party assisted with the Tenant’s move-out from the rental unit and attended on behalf of the Tenant at a final inspection meeting on January 12, 2022. The Landlord described the unit as completely clean, and thus no claim for damage or other issues with the condition of the rental unit. This third party was the one designated to complete the Tenant’s move-out; however, this person was not available to complete cleaning by December 31, 2021. This delayed the move-out substantially and the Landlord then considered the end-of-tenancy date to be January 27, 2022 as they stated in the hearing.

The Tenant raised questions of completion of the Condition Inspection Report, requiring a signature in order for the Landlord to retain the security deposit toward any debt. They also reiterated that the Tenant here had to end the tenancy early for medical reasons, giving ample 35 days’ advance notice, and lived in a fixed income.

## Analysis

I am satisfied from the evidence and testimony of the parties that a tenancy agreement was in place. The document shows the specific terms of the rental amount and the amount of the deposit paid.

With this being a fixed-term tenancy, a tenant's obligation to end a fixed-term tenancy within correct timelines is set in s. 45(2) of the *Act*. Notable is s. 45(2)(b), which provides that a tenancy may only end such tenancy "not earlier than the date specified in the tenancy agreement as the end of the tenancy."

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The Landlord has reduced their claimed amount from \$9,600 to \$1,200. While this is in line with the principle of mitigation, I question why the Landlord had the final move-out delayed until January 17, and there was no evidence on why new tenants could not be in place for the following month. There was no evidence from the Landlord on their attempt to schedule the final condition inspection meeting in December, with their knowledge in place that the Tenant intended to move out from the rental unit before January 2022. Given that s. 35 places the duty for scheduling the meeting on the Landlord, there is no evidence as to the delay. I place the positive obligation on the Landlord for ensuring the tenancy ends in an expeditious a manner as possible.

There is also an element of frustration to the contract here when I account for the Tenant's medical condition. This was an unforeseeable event that radically changed the circumstances that fulfillment of the contract was impossible. I find the contract was frustrated, thus relieving the Tenant from fulfilling their obligations under the contract.

For these reasons, I order the Tenant shall not reimburse the Landlord for the final month of rent as claimed for January 2022.

The Landlord properly applied against the security deposit by filing their Application on January 15, 2022. In fact, this was before the end of the tenancy. Given that I have dismissed the Application, I order the Landlord to return the security deposit to the Tenant, in full. I grant the Tenant a Monetary Order for that amount to secure that repayment owing to them.

As the landlord was not successful in this Application, I find that they are not entitled to recover the filing fee they paid for this Application.

### Conclusion

Pursuant to s. 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$600. I provide this Monetary Order to the Tenant for that amount in the above terms and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file this Order in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: August 31, 2022

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Residential Tenancy Branch