



# 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

LC gave the following testimony. The tenancy was to be for two months commencing on December 1, 2021. The tenant was obligated to pay \$6000.00 per month in rent in advance at the outset of the tenancy the tenant paid a \$3000.00 security deposit which the landlord still holds. The landlord testified that the tenant sent a text message in mid December 2021 advising that she had changed her mind and no longer wanted the suite for two months and wanted to end the tenancy. LC testified that she immediately updated the ongoing posting for that unit from available February 2022 to "immediately". LC testified that she used three different online platforms to re-rent the unit but wasn't able to find someone to take the unit for January 2022 and eventually rented it for February 15, 2022. LC is seeking the loss of revenue for January 2022 of \$6000.00 and the \$100.00 filing fee for this application.

MW gave the following testimony. MW testified that she had changed her mind and no longer wanted this unit. MW testified that she never moved into it and was hoping that the landlord would just keep the deposit and that would be the end of it.

### 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 find that the landlord and tenant entered into a fixed term tenancy for the period from December 1, 2021 to January 31, 2022.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

*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.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, she could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant never lived in the unit and wanted to end the tenancy before the completion of the fixed term on January 31, 2022. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving notice of the tenant's intention to end the tenancy. The landlord posted online rental advertisements the day she was notified. I accept the landlord's evidence that this was a slow rental period, particularly during the winter months, and that the landlord had very limited showings due to the time of year.

The landlord seeks the rental loss for January 2022, the period during which the property could not be re-rented due to the tenant's breach. Accordingly, I find that the landlord is entitled to \$6,000.00 for a loss of January 2022 rent from the tenant. 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 \$6,100.00. I order that the landlord retain the \$3,000.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$3,100.00. 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: October 03, 2022

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Residential Tenancy Branch