



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KSG CONSULTING LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPR, MNRL-S, FFL**

### **Introduction**

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- An order of possession for unpaid rent pursuant to sections 46 and 55;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing, and the landlord was represented by its accountant, TG. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### **Preliminary Issue – service of evidence**

As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenants' evidence. The tenants acknowledged service of the landlord's Notice of Dispute Resolution Proceedings, but during their testimony at the second part of the hearing, advised me that they had not received all of the landlord's evidence until December 8<sup>th</sup>, less than 14 days before the hearing. The landlord acknowledged he sent some evidence late, saying it was an administrative

error. Consequently, I advised the parties that all evidence not exchanged in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure would not be considered in this decision. The following landlord documents were excluded:

- 0 1b\_\_Cleaning\_invoice.pdf (190.95 kB, Nov 29, 2022 ) ,
- 0 1a\_\_House\_Clearing\_Invoice.pdf (40.12 kB, Nov 29, 2022 ) ,
- 0 Dispute\_Letter\_2507\_Departure\_Bay.pdf (4.6 MB, Nov 29, 2022 ) ,
- 0 3\_Walkthrough\_Condition\_Inspection.pdf (175.09 kB, Nov 29, 2022 ) ,
- 0 2\_10\_day\_notice\_\_unpaid\_rents.pdf (63.93 kB, Nov 29, 2022 )

#### Preliminary Issue - tenancy ended

Both parties agree that the tenants vacated the rental unit and that the rental unit is already in the landlord's possession. Consequently, I order the tenancy has ended pursuant to section 44(1)(f) and the landlord's application seeking an Order of Possession is dismissed without leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord testified that the tenancy began with a previous landlord. A copy of the tenancy agreement with the previous landlord was provided as evidence. Rent in the amount of \$2,030.00 is due on the first day of each month. He currently holds the tenants' \$1,000.00 security deposit.

On July 31, 2022, the tenants sent the landlord a notice to end tenancy via email, however the email was not in a readable format. The landlord responded to the tenant's email indicating he could not read the attachment. The landlord acknowledges

receiving a readable notice to end tenancy, provided as evidence, on either August 2 or August 3.

The landlord acknowledges the property was bought with the intent of eventually redeveloping it, however no changes were made to the existing tenancy and the landlord was happy to have the tenants remain. The landlord acknowledges the tenants were mostly out of the rental unit in accordance with their notice to end tenancy by mid-August but the landlord was unsure whether they had fully vacated it because of all the possessions left behind. The landlord hired contractors to remove the tenants' possessions and dispose of them and the rental unit was ready to be rented on approximately September 16<sup>th</sup> due to having to remove the tenants' possessions. A new tenant was found for the third week in October, at a reduced rate of rent from what the tenants were paying.

The tenants testified that the previous landlord never told them she was selling but the tenants were eventually told of the accepted purchase. When meeting the landlord, "K" on March 31<sup>st</sup>, "K" told the tenants that he wants to tear down the garage they had been using as part of their rental. Many times, "K" told the tenants that they pay below market value for their rental unit and that they should start looking for a new place to live. The tenants testified that they were put in the mindset of having to leave their rental unit.

The tenants presented the argument that the landlord tried to force them to leave without compensating them with one month's rent. They also needed to retain the last month's rent because they needed the money to move to their new residence. There was no way they could leave without not having the free month's rent. The landlord was preying on their fear of becoming homeless.

The tenants acknowledge that when they vacated the rental unit in mid-August, they left many of their belongings behind because they were trying to vacate the rental unit as soon as possible. Although they left the rental unit mid-August, they didn't take possession of their new rental until September 1<sup>st</sup>. They left in a rush, moving from a big house to a small apartment and they didn't have enough space or time to move their belongings. They got a storage unit to store many of their goods.

### Analysis

The tenants argue that they believed they were entitled to a month's compensation because the landlord told them they would be tearing down the garage and eventually building a new structure there. While I accept that the landlord may have had these

conversations with the tenants, the landlord never served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use or a 4 Month Notice to End Tenancy for Demolition or Conversion to Another Use. For the tenants to qualify for compensation, **they must be served** with either of these notices to end tenancy. No such notice to end tenancy was ever served upon the tenants and consequently, the tenants were not entitled to withhold rent for their last month of tenancy.

Section 44 of the Residential Tenancy Act states:

**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.

Section 44 of the Regulations states:

**When documents are considered to be received**

44 A document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed.

The evidence before me corroborates the landlord's argument that he received the tenant's email on July 31<sup>st</sup> and that on August 1<sup>st</sup> the landlord notified the tenant that the tenant's notice to end tenancy attachment was unreadable. I therefore deem the tenant's notice to end tenancy served upon the landlord on August 3, 2022, three days after it was sent, in accordance with section 44 of the Regulations.

I have reviewed the tenancy agreement signed between the tenants and the previous owner of the rental unit and I find that rent was due on the first day of each month. As the notice was deemed served on August 3<sup>rd</sup>, the earliest date that the tenants could have ended the tenancy in accordance with section 44 is the last day of September, 2022. Consequently, the tenants are required to compensate the landlord with rent until the earliest date they could have ended the tenancy in compliance with the Act, until September 30, 2022.

Section 7(2) of the Act requires that a landlord who claims compensation for loss that results from the tenant's non-compliance with the Act do whatever is reasonable to minimize the damage or loss. The landlord testified that he began to market the rental unit while the tenants were still occupying it under the tenancy agreement. The landlord ended up accepting new tenants at a lower rate of rent than these tenants. The landlord also testified that the tenants left behind many of their possessions and that he had to hire people to dispose of it, preventing the landlord from marketing it for the beginning of September. The tenants acknowledge that many of their belongings were left behind due to their disabilities and their rush to vacate the unit.

I accept the landlord's testimony and I find that the landlord tried to mitigate the loss by trying to re-rent the unit as soon as possible. I find the landlord is entitled to recover rent for both August and September 2022, a total of \$4,060.00.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's \$1,000.00 security deposit. In accordance with the offsetting provisions of section 72, the landlord may retain the full security deposit in partial satisfaction of the monetary order.

#### Conclusion

I award the landlord a monetary order in the amount of \$3,160.00.

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: December 19, 2022

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Residential Tenancy Branch