



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes      MNDCL-S FFL

### Introduction

The landlord seeks compensation pursuant to section 67 of the *Residential Tenancy Act* (the “Act”). They also seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

A dispute resolution hearing was convened by teleconference on December 1, 2022 at 1:30 PM and only the landlord attended. The landlord gave evidence that she served a copy of the *Notice of Dispute Resolution Proceeding* on the tenant by way of Canada Post registered mail. Based on this undisputed evidence it is my finding that the tenant was served in accordance with the Act and that he had the opportunity to participate in the dispute resolution process.

### Issues

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recover the cost of the application filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on March 1, 2021. Monthly rent was \$1,800.00, due on the fifteenth day of the month. The tenant paid a \$900.00 security deposit and a \$900.00 pet damage deposit. The pet damage deposit was returned to the tenant during the tenancy, but the security deposit is currently retained in trust by the landlord pending the outcome of this application. There is a written tenancy agreement in evidence.

According to the particulars of the application, the landlord states that

My renter has decided to move out one month early after to agreeing to stay until the end of May. He specifically asked to stay longer than his lease as his new accommodations were not yet completed. I in turn made arrangements for the new renters to be held off for one more month to accommodate his request as best I could.

The landlord gave evidence, supported by documentary evidence, that on January 8, 2022 the tenant asked for an extension to the fixed term tenancy. The tenancy was slated to end on March 1, 2022. The tenant requested and received confirmation from the landlord that the tenancy would extend to June 1, 2022. The tenants request for the extension, and the landlord's approval of this extension, is documented in text conversations submitted into evidence.

On April 1, 2022, the tenant notified the landlord that he was moving out on April 30, 2022. The landlord responded that this was inappropriate, but the tenant said that he had to move for employment reasons. This conversation is also documented in text messages.

After approving the extension to the tenancy, the landlord had new tenants lined up to begin renting on June 1, 2022. However, as a result of the tenant ending the tenancy before it was supposed to end on June 1, the landlord suffered a loss of \$1,800 for the month of May 2022.

### Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 45 of the Act sets out the rules on when and how a tenant may end a tenancy. Section 45(2) of the Act prohibits a tenant from ending a fixed term tenancy on any date before the end date of that tenancy.

In this case, the fixed term tenancy was extended for a further three months ending on June 1, 2022. I find that it is more than clear from the conversation between parties that this extension was a fixed term extension and not a periodic, or month to month, extension. There is nothing in the agreement between the parties to suggest that the extension was a month-to-month extension. The tenant ended the tenancy on April 30 and therefore breached section 45 of the Act in respect of how he was permitted to end the tenancy.

But for the breach the landlord would not have suffered a monetary loss of \$1,800.00. This is amount of rent that would have otherwise been paid to the landlord had the tenant upheld his end of the bargain and stayed until June 1. There is, I find, little that the landlord could have done to mitigate her losses in this matter: the tenant was expected to stay until June 1, which is when the new tenants were due to move in.

Therefore, after taking into careful consideration all of the undisputed oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that the tenant breached the Act and that the tenant must compensate the landlord in the amount of \$1,800.00.

The landlord succeeded in her application for compensation and is therefore entitled to an additional \$100.00 under section 72 of the Act to pay for her application filing fee.

In total the landlord is awarded \$1,900.00.

Section 38(4)(b) of the Act permits me to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. Applying this section of the Act, the landlord is authorized and ordered to retain the tenants' security and pet damage deposits totaling \$900.00 in partial satisfaction of the amount awarded.

The balance of the award (\$1,000.00) is granted by way of a monetary order. A copy of this monetary order is issued in conjunction with this decision, to the landlord. And the landlord must serve a copy of the monetary order upon the tenant.

Pursuant to section 67 of the Act the tenant is ordered to pay to the landlord the amount of \$1,000.00 within 15 days of receiving a copy of this decision.

Conclusion

IT IS HEREBY ORDERED THAT:

1. The landlord's application be granted.
2. The landlord is awarded \$1,900.00.
3. The landlord may retain the tenant's \$900.00 security deposit.
4. The landlord is granted a monetary order in the amount of \$1,000.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 1, 2022

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Residential Tenancy Branch