



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on June 15, 2022. The Landlord applied for monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

Both the Landlords (the "Landlord") attended the hearing and were each affirmed to be truthful in her testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were served to the Tenants by Canada Post Registered mail sent on July 5, 2022, two tracking numbers were submitted into evidence as proof of service. I find that the Tenants have been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreements recorded that this tenancy began on February 1, 2021, as a one-year fixed term tenancy, and that these parties entered into a new month-to-month tenancy, that started on February 1, 2022. The February 1, 2022, tenancy agreement recorded that rent in the amount of \$1,950.00 was to be paid by the first day of each month, and that the Landlord had collected a \$975.00 security deposit at the outset of this tenancy. The Landlord submitted copies of two tenancy agreements into documentary evidence.

The Landlord testified that the Tenants sent them a text message on May 9, 2022, stating that they were ending their tenancy and would be moving out as of May 31, 2022. The Landlord testified that they requested that the tenants provided them with official written notice to end the tenancy. The Landlord testified that they received written notice to end the tenancy on May 10, 2022, which indicated the Tenants would be moving out as of May 31, 2022.

The Landlord testified that they had told the tenants based on their notice the tenancy would not end until June 30, 2022. The Landlord testified that the Tenant stated they were leaving as of May 31, 2022, and that they were refusing to cover the rent for June 2022.

The Landlord testified that they advertised the rental unit right away to try and find a new renter but that they were unable to find a new renter for the June 2022 rental period. The Landlord requested a monetary order for the recovery of their lost rental income for June 2022, in the amount of \$1,950.00.

### Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities:

I find that the parties entered into a new month-to-month term tenancy, beginning on January 1, 2022, in accordance with the *Act*.

I accept the testimony and the documentary evidence submitted by the Landlord, that on May 10, 2022, the Tenants served the Landlord with written notice to end their tenancy early as of May 31, 2022, and that the Tenants did move out of the rental unit in accordance with their notice.

Section 45(1) of the *Act* states that a tenant cannot end a tenancy agreement earlier than one month after their written notice is issued to the Landlord.

***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.***

I find that based on when these Tenants issued their written Notice to the Landlord, this tenancy could not have ended in accordance with the *Act* until June 30, 2022. I find that the Tenants breached section 45 of the *Act* when they issued notice to the Landlord to end the tenancy as of May 31, 2023.

In this case, the Landlord is seeking to recover their lost rental income for June 2022, in the amount of \$1,950.00. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;

- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the Landlord's testimony that they were unable to secure a new renter to take over the rental unit for June 2022, Therefore, I find that the Tenant's breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord and that the Landlord has provided sufficient evidence to prove the value of that loss. Additionally, I accept the Landlord's testimony supported by their documentary evidence, that they took reasonable steps to attempt to minimize losses due to the Tenant's breach.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,046.00, comprised of \$1950.00 in lost rental income for June 2022, less the \$975.00 the Landlord is holding as a security deposit for this tenancy.

During my review of the landlord's documentary evidence, I noted that the Landlord issued a rent increase dated January 1, 2022, the same day they signed a new rental agreement with these Tenants. The rent increase document recorded that the rent would be going up \$29.00, from \$1,950.00 to \$1,979.00 per month as of April 1, 2022. Section 42 of the *Act*, states the following regarding the timing of rent increases:

***Timing and notice of rent increases***

*42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;*
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.*

*(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.*

*(3) A notice of a rent increase must be in the approved form.*

*(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.*

As the Landlord and Tenant had just signed a tenancy agreement on January 1, 2022, which was to commence on February 1, 2022, I find that the Landlord could not have increase the rent for this tenancy until 12 months after the effective start date of this new tenancy agreement.

Consequently, I find that the rent increase issued by this landlord for this tenancy was an illegal rent increase and I order the Landlord to return the increased rent amount they collected for tenancy. I accept the undisputed testimony of the Landlord that the increase of \$29.00 was only paid once, for the rental period of May 2022.

Therefore, I order that a \$29.00 deduction be taken from the amounts awarded to the Landlord in this decision, in full recovery of the Tenants' payment of this illegal rent increase.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$1,046.00, consisting of \$1,950.00 in rent, \$100.00 in the recovery of the filing fee for this hearing, less the \$975.00 security deposit the Landlord is holding for this tenancy and less \$29.00 in the illegal rent increase collected in May 2022 for this tenancy.

Conclusion

I find for the Landlord under sections 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$1,046.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: March 3, 2023

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Residential Tenancy Branch