



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

On September 18, 2022, the Landlord made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.W. attended the hearing as an agent for the Landlord, and F.V. attended the hearing as an advocate for the Tenants. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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. As well, all parties in attendance provided a solemn affirmation.

Service of the Landlord’s Notice of Hearing packages and documentary evidence was discussed. After much deliberation, F.V. acknowledged that the Tenants received these packages by email, and she accepted this service. As such, I am satisfied that the Tenants have been duly served these packages. Furthermore, I have accepted the Landlord’s documentary evidence and will consider it when rendering this Decision.

F.V. advised that the Tenants’ evidence was served to the Landlord by hand on December 8, 2022, and S.W. confirmed that he received this evidence. She also noted

that there was additional late evidence that was uploaded to the file because the Tenants simply missed the deadline for this evidence. Based on this undisputed testimony, I have accepted the Tenants' documentary evidence served on December 8, 2022, and will consider it when rendering this Decision. However, as the Tenants' additional evidence was late, it will be excluded and not considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2022, for a fixed length of time of one year ending on August 31, 2023. However, the tenancy ended when the Tenants gave up vacant possession of the rental unit on September 13, 2022, but the Tenants claimed to have returned the keys on September 8, 2022. Rent was established at an amount of \$5,500.00 per month and was due on the first day of each month. A security deposit of \$2,750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

As well, both parties confirmed that the Tenants provided their forwarding address in writing on September 8, 2022, by hand.

S.W. advised that the Landlord was seeking compensation in the amount of **\$5,500.00**

because the Tenants signed a fixed-term tenancy agreement, but did not honour it. He testified that they terminated the tenancy agreement due to spiders, and they did not pay any rent for September 2022. He stated that he started advertising the vacant rental unit on September 20, 2022, on Facebook and Craigslist, that he received interest from several prospective tenants every week, and that they stated that they had better places to rent. He then claimed to have reduced the rent to \$5,000.00 per month on September 20, 2022, and for October 2022 as well. He then alleged that he further reduced the rent to \$4,800.00 in December 2022, then to \$4,600.00 in January 2023, and then raised it to \$5,000.00 in February 2023. Finally, he stated that he eventually re-rented the unit on June 15, 2023, for \$5,500.00 per month. He did not submit any documentary evidence to corroborate any of this testimony.

F.V. referenced emails submitted as documentary evidence to demonstrate why the Tenants ended the tenancy early. She confirmed that there was no breach of a material term of the tenancy that permitted the Tenants to end the tenancy early.

S.W. also advised that the Landlord was seeking compensation in the amount of **\$10,500.00** for the “rent loss for Oct 2022 of \$5,500 and potential loss \$500 x 10 months = \$5,000 each month from Dec 1, 2022 to Aug 31, 2023.”

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants’ forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, the Tenants provided their forwarding address in writing to the Landlord on September 8, 2022, and the Landlord made an Application to claim against the deposit on September 18, 2022. As such, I am satisfied

that the Landlord has complied with the *Act*, and the doubling provisions do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

In addition, I note that Policy Guideline # 5 outlines the Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

As well, I have included the following excerpts from this policy guideline that are relevant to this Decision.

#### **Loss of Rental Income**

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

#### **D. PROOF OF EFFORT TO MINIMIZE DAMAGE OR LOSS**

The person claiming compensation has the burden of proving they minimized the damage or loss. If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied. If a landlord is claiming a loss because they rented the rental unit for less money than under the previous tenancy, or they were unable to rent the unit, evidence like advertisements showing the price of rent for similar rental units, or evidence of the vacancy rate in the location of the rental unit may be relevant.

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed-term tenancy agreement for one year, starting on September 1, 2022, yet the tenancy effectively ended when the Tenants gave up vacant possession of the rental unit on or around September 8, 2022. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

There are few ways under the *Act* that the Tenants could break a fixed-term tenancy without consequences. One would be if there was a signed mutual agreement to end the tenancy. The other would be if there was a breach of a material term of the tenancy, and if the Tenants then asked the Landlord in writing to correct this breach within a reasonable period of time. Moreover, in that warning letter, the Tenants would stipulate that they would be ending the tenancy if the Landlord did not correct this breach of a material term within that time period.

However, there is no evidence before me of a mutual agreement to end the tenancy in writing, nor was there ever a breach of a material term sequence of events as described above. Furthermore, there is no evidence that the Tenants provided any written notice to end their tenancy, and there is no documentary evidence that would support a claim that there was a problem with the rental unit that would be considered a breach of a material term. While it appears as if the Tenants believed they were justified breaking the fixed-term tenancy early, their issues with spiders would not constitute a valid reason under the *Act* for ending the tenancy early.

Given that the Tenants signed a tenancy agreement binding them to the terms of that agreement, I find their justification for not fulfilling their obligations are wholly unacceptable reasons for validly ending this tenancy without consequences. They elected to sign this agreement of their own volition, and if there were problems with the rental unit, the Tenants should have informed the Landlord in writing of these, and asked him to fix them within a reasonable period of time. If these were not corrected, the remedy for the Tenants would have been to apply for Dispute Resolution to request a repair Order forcing the Landlord to fix the issues, and then potentially forcing the Landlord to compensate the Tenants accordingly for any loss of use of the rental unit. Of course, the burden of proof would be on the Tenants to prove that there was a problem in the first place, and that they suffered a loss because of it.

Regardless, ultimately, I am satisfied that the Tenants were not permitted to break the fixed-term tenancy early in the manner with which they did. As such, I do not find that the Tenants ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord would have suffered a rental loss. As the Tenants did not pay any rent for September 2022, I grant the Landlord a monetary award in the amount of **\$5,500.00** to satisfy this debt.

Furthermore, given that the Tenants ended the fixed-term tenancy on or around September 8, 2022, I am satisfied that the Landlord was given little notice to start advertising to re-rent the unit. As the Landlord had been given minimal notification that the Tenants would be ending the fixed-term tenancy early, I am satisfied that the Landlord was put in a position that it would have likely been difficult to re-rent the unit even for October 1, 2022, for \$5,500.00 per month because by that point, most prospective tenants would have already found a new place to live. As such, I grant the Landlord a monetary award in the amount of **\$5,500.00** to remedy this issue for October 2022 rent.

However, I find it important to note here that the Landlord was obligated to mitigate this loss by attempting to re-rent the unit as quickly as possible. While S.W. claimed to have advertised and then randomly reduced and increased the rent over the next several months, I note that he has provided no documentary evidence to corroborate any of his testimony. Had he submitted any documentary evidence to demonstrate that there were no interested parties willing to pay \$5,500.00 per month, and that he was then subsequently forced to lower the rent, I would accept this as adequately mitigating these losses. Yet, there was curiously no documentary evidence submitted at all, with the exception of a 10 Day Notice to End Tenancy for Unpaid Rent.

Moreover, I find it extremely unrealistic that it would have taken him almost nine months to re-rent the property. In my view, he could have made efforts to reduce the rent significantly to re-rent the property as quickly as possible, and then applied to claim for this difference in rental loss against the Tenants.

As I am not satisfied that the Landlord submitted any documentary evidence to demonstrate that any rental losses were adequately mitigated after October 2022, I

dismiss any claims for compensation from November 1, 2022, to June 15, 2023, without leave to reapply.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

Rental arrears for September 2022	\$5,500.00
Rental arrears for October 2022	\$5,500.00
Filing fee	\$50.00
Security deposit	-\$2,750.00
<b>TOTAL MONETARY AWARD</b>	<b>\$8,300.00</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$8,300.00** 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: July 11, 2023

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Residential Tenancy Branch