



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, MNDCL-S**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the named respondents with the hearing package by registered mail sent on or about November 13, 2019. The landlord provided two valid Canada Post tracking numbers as evidence of service. Based on the undisputed evidence I find that the tenants are each deemed served with the hearing package on November 18, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The landlord testified that this tenancy began on March 1, 2019. Monthly rent was \$1,200.00 payable on the first of each month. A security deposit of \$600.00 was collected and is still held by the landlord. The tenants gave notice to end the tenancy on October 8, 2019 and vacated by the end of the month ending the tenancy on October 31, 2019.

The landlord said that they incurred costs to clean, advertise, show and re-rent the rental unit to new occupants. The landlord said that they were able to find new occupants for sometime in November, 2019. The landlord seeks a monetary award in the amount of \$600.00 for unpaid rent for November 2019 and the costs of re-renting the suite.

### Analysis

Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I find that, as the tenants gave notice of their intention to end the tenancy on October 8, 2019 and the tenancy agreement specifies that rent is payable on the first of each month, the effective date of the end of tenancy was November 30, 2019. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,200.00 on November 1, 2019. I accept the evidence of the landlord that the tenants failed to pay the full rent on that date.

Section 67 of the *Act* establishes that if damage or loss results from the breach of the *Act*, regulations or tenancy agreement, 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their losses.

Section 7 of the *Act* explains, "If a tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss

that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present case the landlord gave evidence that after the tenants gave notice to end the tenancy on October 8, 2019 the landlord advertised the suite, interviewed potential occupants and managed to find a new occupant to reside in the suite sometime in November 2019. As such, I find that the landlord took reasonable steps to mitigate their losses.

I accept the landlord's testimony that they still incurred some losses due to the tenants providing insufficient notice to end the tenancy. The landlord testified as to the time spent mitigating their losses and said that while they were able to find a new occupant they suffered some rental income loss. While the landlord did not provide documentary evidence of their monetary losses, they provided cogent testimony and estimates which I find sufficient to establish that they suffered a loss.

Based on the totality of the evidence I find that the landlord suffered some rental income loss and incurred costs to re-rent the suite. I find that the landlord was able to mitigate their losses by having a new tenant occupy the suite sometime in November. As such, I find that an appropriate monetary award is \$500.00, the equivalent of approximately 40% of the monthly rent payable under the tenancy agreement.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in full satisfaction of the monetary award issued in the landlord's favour

### Conclusion

The landlord is authorized to retain the full amount of the security deposit for this tenancy, \$600.00.

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: March 26, 2020

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Residential Tenancy Branch