



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant. The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on May 15, 2020 and was signed for and accepted by the tenant on May 20, 2020. Based on the submissions of the landlord, I find the tenant was served in accordance to section 89 of the *Act*. Therefore, I continued in the absence of the tenant.

### Issue to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

The landlord's undisputed testimony is as follows. The one-year fixed term tenancy began on September 1, 2020 but ended early on April 30, 2020. The tenant was

obligated to pay \$1745.00 per month in rent and at the outset of the tenancy the tenant paid a \$872.50 security deposit which the landlord still holds. The landlord testified that the tenant moved out without any notice on April 30, 2020. The landlord testified that they were able to rent the unit for May 30, 2020 and seek a pro-rated amount of unpaid rent for 29 days of \$1632.42 and the recovery of the \$100.00 filing fee for this application. The landlord also requests to apply the security deposit against the monetary total. The landlord confirmed the amount being sought after applying the deposit is \$859.92.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, 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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Section 45 of the *Act* addresses the issue before me as follows:

### **Tenant's notice**

- 45 (2)**A tenant may end a fixed term 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,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) 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.

As the tenant has not provided the proper notice to end the tenancy as required, I find that they are in breach of the above section and that the landlord is entitled to the 29 days of unpaid rent as claimed for \$1632.42 along with the recovery of the \$100.00 filing fee for a total award of \$1732.42.

### Conclusion

The landlord has established a claim for \$1732.42. I order that the landlord retain the \$872.50 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$859.92. This order may be filed in the Small Claims 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: September 15, 2020

---

Residential Tenancy Branch