



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

The landlord applied for dispute resolution on September 12, 2020 for a monetary order as compensation for monetary loss or other money owed. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on November 17, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and the landlord both attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The tenant confirmed receipt of the Notice of Dispute Resolution that the landlord sent to advise of this hearing date and time. The landlord provided that they undertook substituted service in order to assure the tenant was aware of the hearing and could receive the landlord’s prepared evidence. The tenant confirmed they received the prepared documentary evidence of the landlord in advance of the hearing. On this basis, the hearing proceeded.

The tenant did not provide documentary evidence in advance of the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for monetary loss and/or other money owed pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for their application, pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord provided a copy of the tenancy agreement which both parties signed on September 21, 2018. The agreement shows that the rent amount was to be \$3,100 payable on the first day of each month. The tenant paid a security deposit amount of \$1,550 on September 21, 2018. The parties agreed to a condition inspection meeting on September 28. The landlord agreed that the tenant could move into the house “up to three weeks early for no additional cost.”

The fixed term of the tenancy was agreed between the parties to be November 1, 2018 to October 31, 2020.

The landlord provided a comprehensive document they titled ‘Schedule A’. This is “the written statement of the case” and references Exhibits A through I, which are extensive email records.

On September 27, 2018, the tenant stated their regret to the landlord that they would not be able to rent as agreed. The landlord provided a copy of a text message of that date wherein the tenant states: “I will not be able to rent your house”. The tenant provided the reason that their cancellation was due to an issue with their then-current landlord.

After this message, the landlord confirmed to the tenant on September 28 that they “expect [the tenant] to provide full reimbursement for all losses cause by [the tenant’s] breach of the lease”.

In their timeline of events, the landlord sets out their actions following – these are “significant efforts to mitigate [their] losses”:

- an attempt to rent the house through online advertisements, between September 28 to October 1;
- hiring a professional property management company “to advertise the house, with the instruction to find a tenant as quickly as possible”;

- throughout October and November, the property management company “conducted many showings” – because of market conditions, the property management company advised the landlord to lower the rental asking price to \$3,000
- the property management company found a new tenant on November 21, 2018.

The agreement with this replacement tenant (“tenant One”) was for a 17-month fixed term. The move-in date was November 23, 2018. This tenant One paid \$500 for the remaining days of November, and \$3,000 per month for rent after that. The landlord provided a copy of this tenancy agreement. This shows tenant One paid a \$1,500 security deposit and \$1,500 for a pet damage deposit.

This replacement tenant (“tenant One”) paid rent until July 2019. They “moved out unexpectedly and without notice” on August 6, 2019. The landlord had no communication with tenant One after this. They had to undertake professional cleaning and removal of tenant One’s items – this took “nearly 1.5 weeks”.

The landlord “immediately” started to find another tenant and hired the property management company again for this purpose. On September 3, 2019 they found a new tenant (“tenant Two”). This was a one-year lease for \$3,000 per month, with the tenancy start date of October 1, 2019.

In their submissions the landlord reiterates that the purpose of a recovery of costs is to “put that party in the place it would have been had there been no breach.” They cited the Residential Tenancy Branch Policy Guideline to illustrate this principle.

Additionally, the landlord provided they are not seeking costs for utilities during vacant periods between tenants, an increased insurance premium, costs of moving furniture for successive tenants, and their own time in minimizing costs.

The landlord’s claim is as follows:

1. Rent amounts owing, totalling \$10,900:

timeframe	\$	reason/rationale
November 2018	2,600	time period before tenant One moved in
Dec 2018 – July 2019	800	monthly shortfall, reduced amount of rent to \$3,000/mo
Aug – Sept 2019	6,200	two full months’ rent after tenant One vacated
Oct 2019 – Oct 2020	1,300	monthly shortfall, reduced amount of rent to \$3,000/mo

2. Fees to property management company to find tenants totalling \$3,150.

This is the two “placement” fees for November 2018 and October 2019 for tenant One and tenant Two. The landlord stated the company set their fee at one-half the amount of rent, plus tax. This is \$1,575 each.

3. Interest

The landlord also seeks interest for the above amounts. This is due to use of their own line of credit. This is at the “pre-judgment interest at 4% or the legal rate.” They also listed in their claim they “post-judgment interest at the maximum legal rate.”

By utilizing the initial security deposit withheld by the landlord (\$1,550), the total amount of claim from \$14,050 (plus interest) is reduced to \$12,500 (plus interest).

The tenant did not provide documentary evidence for this hearing. After hearing the landlord’s summary of the chain events and the substance of the claim, the tenant spoke to the claim of the landlord in the hearing.

They stated that, prior to the tenancy start, they advised the landlord of the reasons they could not move in. At one point they had offered to pay the 23 days of lost rent for the month of November 2019. They also answered to the landlord’s submission that market forces were difficult at the time, forcing them to reduce the rent in order to secure a new tenant.

The tenant apologized to say they were sorry this occurred with subsequent tenants. At the same time, they responded to say the situation with the subsequent tenant was not due to the breach of their original tenancy agreement.

Analysis

From the testimony of the parties, and the documentary evidence provided by the landlord, I am satisfied that there was an initial tenancy agreement in place. They provided the specific terms of the rental amount and the paid security deposit. Additionally, the provided copy establishes that there was a fixed term tenancy set in place.

Neither party may end a fixed term tenancy early. The *Act* section 45 sets out how a tenant may end a tenancy:

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.

In this case, the evidence of the landlord is that the tenant breached the fixed term tenancy agreement by providing notice to end the tenancy on September 27, 2018. The tenant in the hearing acknowledged that they breached the tenancy agreement; therefore, I find a breach occurred as shown in the evidence of the landlord.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As set out above, there are three separate pieces in the landlord's claim: recovery of rent; costs associated with re-renting the unit; and interest. To determine the landlord's eligibility for compensation, I carefully examine the evidence they have presented for each item, to establish whether they have met the burden of proof.

I find a remedy is in order where the tenant breached the *Act*. I award a replacement of the full remaining amount of rent for the month of November, prior to tenant One moving in. This is the amount of \$2,600. The tenant in the hearing renewed their offer to pay this amount to the landlord; on this basis, I make this award for compensation.

I also award a replacement of the full rent amount for the months following, up until the end of the agreed-upon fixed term. As the landlord stated, damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. I find this includes the difference between what the landlord

would have received from the tenant and the amount of rent they received per month upon rental to new tenants. Including the vacant months of August and September 2019, this is the amount of \$2,300.

The landlord claimed two full months' rent for August and September 2019. I find this is because of the breach by tenant One. This is not attributable to the tenant here. I deny the landlord an award for this portion of their claim.

The landlord claimed the cost of hiring a property management company. This is a "placement fee" for each successive tenant. I find this is not a direct cost of the breach of the tenancy agreement by the tenant. Under the Act section 67, compensation is only paid where loss results from a party not complying with the legislation or the tenancy agreement. These would be direct costs of such a breach.

The cost of enlisting a property management company is the result of the choice made by the landlord. In the case of tenant One, I appreciate there was some urgency to the situation; however, the tenant does not bear the cost of the landlord's choice for this method. The landlord was moving within a very short time frame; however, the attribution of this cost stems from the landlord's business decision rather than from the tenant's breach.

In the case of tenant Two, the landlord's need for property management assistance arose from abrupt end of the tenancy by tenant One. I find this monetary loss is not attributable to the breach of the initial tenancy agreement by the tenant here.

The landlord claims for interest here is not defined. It is seemingly contingent on market interest rates. This landlord provided that they borrowed from their line of credit which has a variable rate. I find this also is the choice of the landlord in how they chose to carry out business in light of successive breaches by tenants. I find it is not the responsibility of the tenant to compensate the landlord for this cost. Moreover, the landlord did not provide records to show their use of the line of credit, nor a summary of the applicable variable interest rates.

The Act section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$4,900. After setting off the \$1,550 security deposit, there is a balance of \$3,350. I am authorizing the landlord to keep the security deposit amount and award the balance of \$3,350 as compensation for the shortfall rent amounts.

Because they were successful in this hearing, I award the \$100 filing fee amount to the landlord.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,450, for rent amounts owed by the tenant and recovery of the Application filing fee. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 *Act*.

Dated: December 16, 2020

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Residential Tenancy Branch