



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** MNRL-S, FFL

### Introduction

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

- and a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ('Application') and evidence on package on October 18, 2020 by way of registered mail to both his forwarding address as well as the address on his driver's license. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on October 23, 2020, 5 days after mailing. The tenant did not submit any written evidence for this hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for money owed or losses?

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

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on August 1, 2020, with monthly rent set at \$1,800.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$900.00, which the landlord still holds. The landlord testified that the strata bylaws prohibit short term rentals, and the minimum requirement is 3 months of tenancy. The landlord testified that this was explained to the tenant, and the tenant signed the Form K acknowledging that he understood and agreed to the bylaws. The landlord submitted a copy of the form in their evidentiary materials.

The landlord testified that the tenant moved out on August 10, 2020 without giving proper notice in accordance with the *Act*. The landlord testified that she was unable to fill the vacancy for September and October 2020. The landlord is seeking a monetary order for loss of monthly rent for the remaining 2 months.

### **Analysis**

I find that the landlord provided sufficient evidence to show that the tenant agreed to a minimum term of 3 months in order to comply with strata bylaws.

Section 45(2) deals with a Tenant's notice in the case of a fixed term 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.

I find that the tenant did not end the tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No application for dispute resolution has been filed by the tenant. The tenant moved out earlier than the 3 months required by the strata bylaws and agreed term of the tenancy. I find that the landlord made an effort to mitigate the tenant's exposure to the landlord's monetary losses as is required by section 7(2) of the *Act*, but was unable to find a new tenant for the remaining 2 months. I, therefore, allow the landlord's monetary claim or loss of rental income for the month of September 2020 and October 2020 in the amount of \$3,600.00.

The landlord continues to hold the tenant's security deposit of \$900.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$900.00 in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I am allowing the landlord to recover the filing fee from the tenant.

### **Conclusion**

I allow the landlord a monetary order for recovery of the lost rental income as well as the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$900.00 in partial satisfaction of the monetary claim.

I issue a Monetary Order in the amount of \$2,800.00 in the landlord's favour.

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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 *Residential Tenancy Act*.

Dated: February 1, 2021

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Residential Tenancy Branch