



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **LL: MNDL, MNDCL, MNRL-S, FFL**  
                                 **TT: MNDCT**

### **Introduction**

This hearing, reconvened from an earlier hearing adjourned on March 8, 2021, dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Each party was assisted by a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?  
Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began on June 1, 2020 and was scheduled to end on May 31, 2021. The monthly rent was \$1,550.00 payable on the first of each month. The tenant pre-paid full rent up to November 30, 2020. A security deposit of \$775.00 was paid at the start of the tenancy and has been returned to the tenant in accordance with the *Act*.

The tenant gave written notice on August 30, 2020 to end the fixed-term tenancy earlier than its full term. The tenant submits that there were numerous breaches of material terms of the tenancy agreement that allowed them to end the tenancy pursuant to section 45(3) of the *Act*. The tenant complained about the landlord and their family members peering into the rental unit on multiple occasions, hearing voices from other units, being blamed for a broken garburator and failing to assist the tenant in applying for provincial rent subsidies. The tenant submits that the landlord's conduct breached their right to quiet enjoyment and reasonable privacy. The tenant seeks a return of their prepaid rent for the months of October and November in the amount of \$3,100.00.

The tenant vacated the rental unit on September 30, 2020. The parties prepared a condition inspection report and noted some issues at the end of the tenancy. The landlord submits that the most notable damage was damage from an incident on August 25, 2020 when there was flooding in the rental unit. The landlord attributes the water damage to the tenant clogging the garburator and failing to report the issue in a timely manner. The landlord submitted a copy of the condition inspection report for the tenancy, photographs of the suite and quotes from third party companies to replace fixtures. The quote for work on the rental unit is for an amount of \$2,940.00. The landlord testified that repairs have not been performed and they have incurred no expenses due to the damage as at the date of the hearing.

The landlord disputes that they have breached the tenant's right to quiet enjoyment. The landlord says that during the tenancy there was no complaints about noise or

privacy by the tenant. The rental unit is a suite in a house occupied by the landlord and while there are instances when the other occupants would be audible, the landlord submits that the level of noise is reasonable. The landlord testified that they sometimes distribute mail received at the main portion of the building to the tenant but disputes that they have peered into the rental unit.

The landlord submits that they took reasonable steps to mitigate their rental income losses by advertising the rental unit, interviewing prospective new occupants and negotiating rental prices. The landlord testified that it was not until January 1, 2021 that a new tenancy could start and then at a monthly rate of \$1,400.00, \$150.00 less than the fixed-term tenancy with the tenant.

The landlord now seeks a monetary award in the amount of \$8,340.00 comprised of:

<b>Item</b>	<b>Amount</b>
Quote for Repairs to Rental Unit	\$2,940.00
Authorization to retain rent for October and November 2020	\$3,100.00 (2 x \$1,550.00)
Loss of Rent for December 2020	\$1,550.00
Loss of Rental Income for January 2021 to May 2021	\$750.00 (5 x \$150.00)
<b>TOTAL</b>	<b>\$8,340.00</b>

Both parties characterize the other as extorting and threatening them with legal actions and consequences in order to obtain their intended results. The landlord submits that the tenant threatened to report the rental unit as an illegal unit to the municipality in order to obtain a return of the full security deposit for this tenancy. The tenant submits that they did not agree to compensate the landlord for any damage to the rental unit and any signature on documents stating so was obtained under duress.

### 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 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.

Section 28 of the *Residential Tenancy Act* speaks to a tenant's right to quiet enjoyment, and provides as follows:

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I do not find the tenant's submissions that they have experienced a loss of quiet enjoyment to be sufficiently supported in the evidence or to have an air of reality. The tenant's submissions consist primarily of complaints which I find to be both hyperbolic and subjective. As noted above a claim for breach of quiet enjoyment requires considerably more than a few complaints about incidents when the tenant was visible through their windows. I further find little evidence in support of the tenant's noise

complaints. If there was frequent, unreasonable disturbance it would be reasonable to expect there would be some documentary evidence by way of correspondence or complaints. I find insufficient evidence by the tenant to demonstrate that there has been any breach on the part of the landlord that would give rise to a monetary award or a basis for an early end of the fixed-term tenancy. Accordingly, I dismiss the tenant's application in its entirety without leave to reapply.

The parties gave evidence that the tenant made payment of monthly rent through to November 30, 2020 which the landlord still holds. Pursuant to section 26(1) of the Act rent is payable on the date when it is due under the tenancy agreement. As this tenancy ended on September 30, 2020, I find that no further rent was due and the balance of \$3,100.00 paid for this tenancy to be an overpayment held in trust by the landlord.

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."

The parties agree that the tenant gave written notice on August 30, 2020 and vacated the rental unit on September 30, 2020. The landlord submitted evidence that they began advertising the rental unit and showing to prospective occupants in September 2020. The landlord provided portions of some of the email correspondence with prospective occupants and a list of showing dates. While I accept that the landlord took some actions to mitigate their rental income losses, I am not satisfied that the evidence justifies the 4-month duration before a new tenancy could commence.

I find insufficient evidence that a 4-month delay between receiving notice from the tenant to commencing a new tenancy was reasonable or inevitable. The landlord provided little evidence regarding the steps they took or the reasons for the delay. The

landlord testified that they did not perform repairs to the rental unit so it was available for occupation. Little details were provided by the landlord as to the criteria they employed to screen applicants or why they were unable to enter a new tenancy when they had multiple showings.

Based on the evidence, while I find that the tenant breached the fixed-term tenancy agreement by ending it before its full term. I find that the landlord has not demonstrated that the full amount of the rental income loss incurred are due to the tenant rather than contributed to by the landlord's failure to take reasonable steps to mitigate their losses. The landlord submits that they were eventually able to find a new occupant for January 1, 2021. I do not find it reasonable, given the state of the rental housing market, that the landlord was not able to find a new occupant for 4 months after being provided notice.

I further find little evidence that the landlord was required to reduce the monthly rent in order to find a new occupant for the rental unit. It is evident that the landlord had multiple showings over the course of months at the posted rental price and they provided little evidence as to why they could not commence a tenancy at the posted rent earlier. I find insufficient evidence that the landlord entering a new tenancy for a lower monthly rent is a loss attributable to the tenant and not due to the failure of the landlord to take reasonable steps.

I find that the landlord suffered some losses due to the early breach of the fixed term agreement but not the full amount claimed in their application. Therefore, I find a monetary award in the amount of \$3,100.00, the equivalent of 2 month's rent, to be appropriate given that the landlord took some measures to mitigate their losses but these measures were not wholly reasonable under the circumstances. I authorize the landlord to retain the overpayment of \$3,100.00 held for this tenancy in full satisfaction of this monetary award.

I find insufficient evidence in support of the portion of the landlord's application for costs of repairs to the rental unit. While the landlord submits that the tenant caused water damage to the suite, the landlord testified that they have incurred no costs for repairs and a new occupant now resides in the suite. As noted above the applicant bears the evidentiary onus to demonstrate that there is damages or loss. Based on the evidence of the parties I find no loss has been incurred that would give rise to a monetary award. Consequently, I dismiss this portion of the landlord's application without leave to reapply.

As the landlord was not wholly successful in their application I decline to issue an order allowing for the recovery of the filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I issue a monetary award in the landlord's favour in the amount of \$3,100.00. The landlord may retain the overpayment of rent for this tenancy of \$3,100.00 in full satisfaction of this monetary award.

The balance of the landlord's application is dismissed without leave to reapply.

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 16, 2021

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Residential Tenancy Branch