



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURION PROPERTY ASSOCIATES  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, 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; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

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

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

Background, Evidence

The landlord's legal counsel gave the following submissions. The one year fixed term tenancy began on July 15, 2020 but ended early on January 31, 2021. The monthly rent of \$1750.00 was due on the first of each month. As an incentive, the tenants were given a discount on rent and parking from the outset of the tenancy and throughout their tenancy. Counsel submits that the discount was applicable as long as the tenants remained during the entire term of their tenancy. Counsel submits that the addendum to the tenancy agreement outlines that any discounts are to be returned if the tenants move out earlier than the agreed upon term of one year.

Counsel submits that the amount of discounts received during their tenancy was \$1391.61. Counsel submits that further to the tenancy agreement, the landlord is entitled to \$800.00 in liquidated damages for breaking the contract. Counsel submits that the tenants gave short notice to move out on January 5, 2021 that they would be out by January 31, 2021. Counsel submits that despite all attempts to rent the unit, the landlord was not able to until March 1, 2021 and seeks loss of rent of \$1750.00 for the month of February as a result of the tenants' actions. Counsel submits that the landlord also seeks the recovery of the filing fee for this application.

The landlord is applying for the following:

1.	Loss of Revenue February 2021	\$1750.00
2.	Liquidated Damages	800.00
3.	Rent Incentive discount	1391.61
4.	Filing Fee	100.00
5.		
6.		
7.		
8.		
9.		

10.		
	Total	<b>\$4041.61</b>

RH gave the following testimony on behalf of the tenants. RH testified that he doesn't dispute the amounts claimed by the landlord but feels that he was justified in ending the tenancy early. RH testified that due to hardship because of COVID – 19, he had to end the tenancy. RH testified that he had lost his employment because of an injury and his medical employment benefits ran out. RH testified that he just recently began employed but only for a seasonal job. RH testified that he also had safety concerns in living in the building with an aggressive breed of dog and a violent neighbor. RH testified that he believes he should not be held to the contract based on the above.

### 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.

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.

Both parties agree that the tenant gave notice to end the tenancy on January 5, 2021 with a move out date of January 31, 2021. I find that the tenant did not provide sufficient and appropriate notice as required and is in breach of the above section. The landlord attempted to re-rent the unit through their website and also offered the unit to others in the building if they wanted to change units, but to no avail. I find that the landlord took reasonable and appropriate steps to mitigate the loss.

I also find that the tenant ended the tenancy early without sufficient justification. Although unfortunate and unsettling, a loss of employment does not relieve the tenants from a legal contract such as a fixed term lease. I find that the tenants have ended the tenancy pre-maturely and without sufficient justification. I further find that the tenants have not met the requirement of having a tenancy in place for one year and now must pay back the discount they received as per the addendum to their agreement.

To summarize, I find that the landlord has provided sufficient evidence to prove the loss of rent for February 2021, liquidated damages as per their tenancy agreement, return of the pro-rated amount of rent incentive discount as part of the tenancy addendum as well as the filing fee for this application for a total award of \$4041.61.

### Conclusion

The landlord has established a claim for \$4041.61. I grant the landlord an order under section 67 for the balance due of \$4041.61. 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: December 07, 2021

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Residential Tenancy Branch