



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNRL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent of \$3,060.00; and to recover his \$100.00 Application filing fee.

The Tenant, L.K., and an agent for the Landlord, M.P. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

During the hearing, the Tenant, R.K., advised me of his full legal name, which was not set out in the Application. Therefore, I amended the Respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began about ten years ago, with the Tenant's daughter being the full time, long term tenant. They agreed that the final monthly rent due to the Landlord by the Tenant was \$1,530.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$650.00, and no pet damage deposit. They agreed that the Landlord returned the security deposit to the Tenant in full when the tenancy ended on February 15, 2022.

The Landlord's claim is that the Tenant failed to give sufficient notice of ending the tenancy, and failed to pay rent owing for February and March 2022. The Parties agreed that the Tenant provided the Landlord with written notice of the end of the tenancy on February 1, 2022.

When I asked the Agent if the Landlord had re-rented the rental unit, he said:

I believe they are in the process of working with a Heritage Society. It's from 1910, has asbestos and knob and tube wiring. Don't know what the plan is for this particular house. In terms of its marketability, it's not super desirable to rent out now. Whether they did or not is based on it's condition.

The Tenant testified of the disturbances endured because of ongoing renovations to other parts of the residential property.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to

me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

The undisputed evidence before me is that the Tenant did not provide the Landlord with sufficient notice of the end of the tenancy.

Section 45(1) of the Act states that a tenant may end a periodic 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, and (b) 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. A notice to end a tenancy given under this section must comply with section 52, as to *form and content of the notice*.

To have given sufficient notice to end the tenancy, the Tenant should have delivered the notice by January 31, 2022, for a tenancy ending on February 28, 2022. However, the Tenant gave notice within February 2022, which means that the end of the tenancy would have been March 31, 2022. Based on this undisputed evidence before me, I find that the Landlord has proven the first step of the Test, that the Tenant breached the Act.

The Tenant testified as to having suffered disturbances, due to renovations; however, section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

As the Tenant failed to pay rent after January 2022, but continued to live in the unit in February, I find that the Landlord suffered the loss of rent in February and March 2022. The value of this loss is easy to calculate as two months’ rent at \$1,530.00 per month, which equals the Landlord’s claim of \$3,060.00.

However, I find that there is no evidence before me that the Landlord mitigated or minimized this loss in any way, fulfilling step four of the Test. There is no evidence of the Landlord attempting to re-rent the unit to find a new tenant who could pay \$1,530.00 or more for the unit.

As the Landlord failed the fourth step of the Test, I largely dismiss the Landlord's Application. However, given the clear evidence that the Tenant breached section 45 of the Act in not giving sufficient notice to end the tenancy, I find it appropriate in this set of circumstances to **award the Landlord** a nominal amount of ten percent of his claim or **\$306.00** from the Tenant, pursuant to sections 62 and 67 of the Act and Policy Guideline #16.

Given that the Landlord is predominantly unsuccessful in this Application, I decline to grant him recovery of the \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act.

### Conclusion

The Landlord is mainly unsuccessful in his claim, as he failed to mitigate the loss suffered by finding a new tenant for the rental unit. However, given the loss he incurred, because the Tenant breached the Act by giving insufficient notice, I grant the Landlord a nominal award of **\$306.00** from the Tenant in the form of a Monetary Order.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 25, 2023

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Residential Tenancy Branch