



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRLS-L, OPR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent, recovery of the filing fee and an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord and his spouse, who provided affirmed testimony. The Tenants did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I inquired with the Landlord regarding service of the documents as explained below.

In the hearing the Landlord testified that the Application, the Notice of Hearing and the evidence before me were sent individually to each of the Tenants by registered mail at the dispute address on March 16, 2018, and provided me with the registered mail receipts. Based on the above, I am satisfied that the Tenants were deemed served with the Application, the Notice of Hearing and the evidence before me on March 21, 2018, five days after they were sent to them at the rental unit by registered mail.

### Preliminary Matters

#### **Preliminary Matter #1**

At the outset of the hearing the Landlord identified that the names given for the Tenants in the Application are their commonly used names, not their legal given names. I confirmed the spelling of their legal names and amended the Application to include both their commonly used names and their legal names.

### **Preliminary Matter #2**

The Landlord withdrew their Application for an Order of Possession as they stated that the Tenants moved out of the rental unit on April 28, 2018. The Application was therefore amended pursuant to the *Act* and the Rules of Procedure.

### **Preliminary Matter #3**

The Landlord stated that since filing the Application, the amount of outstanding rent owed has increased. As a result, the Landlord sought to amend his Application to include the additional rent owed for April and May, 2018. Section 4.2 of the Rules of Procedure states that Applications may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. The monetary claim from the Landlord was therefore amended to include outstanding rent for April and May, 2018, in accordance with the *Act* and the Rules of Procedure.

### **Preliminary Matter #4**

In the hearing the Landlord stated that the Tenants have also damaged the property. However, the original Application did not indicate that the Landlord sought to recover costs for damage to the rental unit and the Landlord has not submitted an Amendment to an Application for Dispute Resolution (an “amendment”) seeking compensation for damage. The ability to know the case against you and to provide evidence in your defense is fundamental to the dispute resolution process. I do not find that this is a circumstance which could reasonably be anticipated by either party pursuant to section 4.2 of the Rules of Procedure. Further to this, as the Tenants were not given notice that the Landlord intended to seek compensation for damage to the rental unit prior to the hearing, I find that it would be both prejudicial to the Tenants and a breach of the Rules of Procedure and the principles of natural justice to allow the Landlord to amend the Application at the hearing to include this claim. As a result, the Landlord’s request to amend the Application was denied. The Landlord remains at liberty to file a separate Application seeking compensation for damage to the rental unit.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order and to retain the security deposit paid by the Tenants for unpaid rent and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began approximately three years ago and that the Tenants vacated the property on April 28, 2018, after being served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"). The Landlord stated that at the start of the tenancy a \$300.00 security deposit was paid by the Tenants, which he still holds, and that at the time the tenancy ended rent in the amount of \$1,000.00 was due on the first day of each month.

The 10 Day Notice in the documentary evidence before me, dated March 7, 2018, has a vacancy date of March 17, 2018, and states that the Tenants owe \$1,130.00 in outstanding rent. The Landlord testified that at the time the Tenants vacated the rental unit, they owed \$2,130.00 in outstanding rent; \$130.00 for February, 2018, \$1,000.00 for March, 2018, and \$1,000.00 for April, 2018. The Landlord also sought \$1,000.00 in rent for May, 2018, as the Tenants failed to move out in accordance with the vacancy date listed on the 10 Day Notice and he was left unable to re-rent the unit for May.

Analysis

I accept the Landlord's undisputed testimony that as of the date of the hearing, the Tenants owe \$3,130.00 in unpaid rent. Pursuant to section 72 of the *Act*, I find that the Landlord is also entitled to the recovery of the \$100.00 filing fee and to retain, in full, the \$300.00 security deposit paid by the Tenants, in partial recovery of the above noted amounts owed.

Based on the above and pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of \$2,930.00: \$3,130.00 in outstanding rent, plus the \$100.00 filing fee, less the \$300.00 security deposit.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,930.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: May 16, 2018

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Residential Tenancy Branch