



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, FFL

### Introduction

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

- a Monetary Order for unpaid rent and utilities pursuant to section 67; 3and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlord's application for dispute resolution dated October 14, 2017 was served on the tenant at a forwarding address provided by the tenant by registered mail sent on or about October 14, 2017. Based on the landlord's testimony, I find that the tenant was deemed served with the landlord's application for dispute resolution and evidence package in accordance with sections 88, 89 and 90 of the Act on October 19, 2017, five days after mailing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

### Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This fixed term tenancy began in September, 2016 and ended in January, 2017. The monthly rent was \$1,600.00 payable on the first of each month. The tenant paid a security deposit of \$800.00 and pet damage deposit of \$400.00 at the start of the tenancy which is still held by the landlord. The tenancy agreement provides that the tenancy was scheduled to end in September, 2017.

The landlord seeks a monetary award of \$6,800.00 for the following items.

Item	Amount
Unpaid Rent January, 2017	\$1,600.00
NSF Charge	\$7.00
Unpaid Rent February, 2017	\$1,600.00
Unpaid Rent March, 2017	\$1,600.00
Unpaid Rent April, 2017	\$1,600.00
Move In Fee	\$100.00
Interest on Unpaid Rent	\$193.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$6,800.00</b>

The landlord testified that the tenant's rent payment for January, 2017 was returned NSF. The landlord said that the tenant subsequently vacated the rental by January 31, 2017. The landlord submits that while they posted the rental unit as available in February, 2017 they were unable to find a new tenant to occupy the suite until May, 2017.

The landlord said that they incurred an NSF charge of \$7.00 from their financial institution for the January, 2017 cheque. The landlord testified that the strata corporation for the rental unit charges a move in fee of \$100.00. The landlord said that they wish to collect interest on the unpaid rent. The landlord was uncertain how the interest was calculated or whether the tenancy agreement provides that they are entitled to charge interest.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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.

Residential Tenancy Policy Guideline 5 states that while it is not necessary that the party making a claim do everything possible to minimize the loss, some reasonable efforts must be taken. The Guideline further provides that, "Where the tenant has

vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.”

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,600.00. I accept the landlord's evidence that the tenant failed to pay the full rent for the month of January, 2017 and the tenant vacated the rental unit at the end of that month. Accordingly, I find that the landlord is entitled to a monetary award of \$1,600.00 for unpaid rent for January, 2017.

I accept the landlord's evidence that the tenant's sudden breach of the fixed term tenancy agreement caused some loss. However, I find that there is insufficient evidence that the landlord took reasonable steps in order to mitigate their rental income loss. There is insufficient evidence that the landlord listed the rental unit to find a new occupant within a reasonable timeframe. The tenant vacated the rental unit in January, 2017 after failing to provide rent for that month. The landlord testified that the rental unit was advertised in February, 2017 after the tenant vacated. I do not find it reasonable that a new occupant could not be found to take possession until May, 2017, an additional three months. The landlord failed to provide sufficient evidence that reasonable efforts were taken to mitigate their losses. Under the circumstances, as there is insufficient evidence to show that the landlords acted in a reasonable manner to mitigate their loss of rental income, I find that a monetary award of \$1,600.00, the equivalent of one month's rent is appropriate.

The landlord has provided insufficient evidence in support of the other items for which they seek a monetary award. I find that there is no documentary evidence that the landlord incurred a charge of \$7.00 for NSF fees from their financial institution. Similarly, the landlord has failed to provide documentary evidence in support of a move-in fee of \$100.00 charged by the strata for the rental building. The landlord stated in their testimony that they believe the strata charges a fee for any party moving into the building. If this were the case I find that this is not a charge attributable to the tenant's violation of the tenancy agreement but simply a charge that would be incurred by any tenant. Consequently, I dismiss this portion of the landlord's application without leave to reapply.

While the landlord seeks a monetary award for interest on the unpaid rent the landlord could not articulate how the amount they seek is calculated, could not identify a clause within the tenancy agreement that gives rise to a right to charge interest nor could they

determine on what the interest was charged. I find that there is insufficient evidence in support of this portion of the landlord's claim and dismiss it without leave to reapply.

As the landlord's application was partially successful, the landlord is entitled to recover the filing fee of \$100.00 from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$800.00 security deposit and \$400.00 pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour.

#### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,100.00 under the following terms, which allows the landlords to recover unpaid rent for the months of January and February, and the filing fee for their application:

Item	Amount
Unpaid Rent January, 2017	\$1,600.00
Unpaid Rent February, 2017	\$1,600.00
Filing Fee	\$100.00
Less Security Deposit	-\$800.00
Less Pet Damage Deposit	-\$400.00
<b>TOTAL</b>	<b>\$2,100.00</b>

The tenant must be served with 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: May 22, 2018

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Residential Tenancy Branch