



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes    MNRL-S, FFL

### Introduction

The landlords made an application for a monetary order for unpaid rent and/or utilities with leave to apply the security deposit towards their claim and, seek the return of their filing fee and a move out fee paid on behalf of the tenants, pursuant to the Residential Tenancy Act, (the *Act*).

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:44 P.M. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The landlord PZ attended the hearing and was given a full opportunity to be heard, to present affirmed testimony to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord PZ and I were the only ones who had called into this teleconference.

### Issue(s) to be Decided

- Are the landlords entitled to a monetary award for unpaid rent pursuant to section 67 of the *Act*?
- Are the landlords entitled to a monetary order for a move out fee paid for the tenants pursuant to section 67 of the *Act*?
- Are the landlords entitled to apply the security deposit towards their claims?
- Are the landlords entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

### Background and Evidence

A copy of a written tenancy agreement dated August 25, 2017, was entered into evidence. The tenancy agreement was signed by both landlords and by both tenants as of August 25, 2017. The tenancy was a fixed term tenancy for one year that began on September 1, 2017. Rent was set at \$1,900.00, per month payable in advance on the first of each month. There was a security deposit in the amount of \$950.00 paid for this on August 26, 2017.

The landlord PZ gave evidence that tenants never gave any written notice of their intention to end the tenancy other than via text messages. They abandoned the premises on December 15, 2017. They did not pay any rent for December of 2017.

The landlord PZ provided further evidence that she served both tenants with copies of the Dispute Resolution Proceeding Package personally at the rented premises at 1:00 P.M. on December 15, 2017, before they left.

The landlord PZ also gave evidence that the landlords were required to pay a \$100 elevator move out fee to their Strata based on the building rules and, that they have not recovered this from the tenants.

### Analysis

Sections 88 and 89 of the *Act* confirm that there are prescribed methods for the service of different types of documents including Applications for Dispute Resolution, the evidence in support thereof and, the Dispute Resolution Proceeding Package.

The Residential Tenancy Branch Rules of Procedure (the “Rules”), are designed to ensure a fair, efficient, and consistent process for resolving disputes. The Rules require that an application contain the following:

- A detailed calculation of any monetary claim; and
- Service of any applicable amendment forms at least 14 days before the hearing.

Policy Guideline 12 (12) states that at the dispute resolution hearing, if the service is in dispute the arbitrator may consider evidence from both the party receiving the documents and, the party serving the document to determine the date of service and, the calculation of the time for responding. It also confirms the authority of the arbitrator

to make an order that a document has been sufficiently served for the purposes of the Act based on section 71 (2) (b) of the Act. In doing so the arbitrator must consider procedural fairness and prejudice to the affected party.

Policy Guideline 12 (15) states that where proof of service is required the person who actually served the documents must either:

- Be available as a witness in the hearing to prove service OR
- Provide a signed statement with details of how the documents were served

The details that should be provided depend on the method of service. Proof of service personally should include: the date and time of service; the location where service occurred; a description of what was served; the name of the person who was served and; the name of the person who served the documents.

In this case the landlord PZ provided unchallenged evidence that she served both tenants with copies of the Dispute Resolution Proceeding Package personally at the rented premises at 1:00 P.M. on December 15, 2017. There was no witness to the service and no *Proof of Service Form* was filed.

Sections 71 (1) and 89 (1) (e) of the RTA allow me to make an order that a document that was not served in accordance with section 88 or 89 is sufficiently given or served for the purposes of the Act.

Here the landlord has met the onus to prove actual service of the Dispute Resolution Proceeding Package. While the landlord did not file a *Proof of Service Form* for each tenant served at the hearing the landlord PZ was able to provide uncontradicted evidence about the actual service on the tenant. This included the location, day and time, and method of service. Accordingly, I make an order pursuant to section 71 (1) of the Act that the Dispute Resolution Proceeding Package, has been sufficiently served.

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 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement

must compensate the landlord for damage or loss that results from that failure to comply.

In this case, there is undisputed evidence that the tenants have not paid their rent for the month of December 2017. I allow the landlord's application for a monetary award of \$1,900.00, for unpaid rent owing for this month.

There is also undisputed evidence that the landlords were required to pay a \$100 elevator move out fee to their Strata and, that they have not recovered this from the tenants. I allow the landlord's application for a monetary award of \$100.00, for the recovery of this fee paid for the tenants' use of the elevator while moving out.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee paid for this application from the tenants.

The *Act* contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 to the *Act*, the Landlord is required to handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

There was clear evidence to show that the landlords had applied for arbitration, within 15 days of the end of the tenancy to retain a portion of the security deposit, as required

under section 38. The landlords' application was made on December 15, 2017, the same day the tenants actually abandoned the premises.

Therefore, I find that the landlords are entitled to retain all the \$950.00 security deposit and to apply this as against the monies owing to them by the tenants.

### Conclusion

I issue a monetary Order under the following terms, which allows the landlords to recover unpaid rent owing, the elevator move out fee and the filing fee for this application:

Item	Amount
Unpaid December 2017 Rent	\$1,900.00
Elevator fee paid to Strata	100.00
Recovery of Filing Fee for this Application	100.00
Deduct security deposit	-950.00
<b>Total Monetary Order</b>	<b>\$1,150.00</b>

The landlords are provided with an Order in the above terms and the tenants must be served with the Order as soon as possible. Should the tenants fail to comply with the Order it may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 06, 2018

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Residential Tenancy Branch