



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PARKSIDE REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the *Act*) for a Monetary Order for unpaid rent, permission to withhold the security deposit towards the money owed and the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 12 minute hearing. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding package (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing along with a copy of the Landlord’s evidence was sent to the Tenant by registered mail on May 7, 2018. The tracking number for the registered mail was included in the evidence submitted by the Landlord and is listed on the front page of this decision.

Entering the tracking number on the Canada Post website confirms the package as claimed. I find that the Tenant was duly served with the Notice of Hearing in accordance with the *Act*. The hearing continued in the absence of the Tenant as per Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to withhold the security deposit in partial satisfaction of compensation owed?

Is the Landlord entitled to recover the filing fee for this Application for Dispute Resolution?

### Background and Evidence

The Landlord provided affirmed and undisputed testimony regarding the tenancy. The tenancy began on September 1, 2017 and was for a fixed term of nine months, to end on May 31, 2018. Rent in the amount of \$2,100.00 was due on the first day of the month and a security deposit in the amount of \$925.00 was paid at the outset of the tenancy. The tenancy agreement was submitted in evidence.

The Landlord testified that the Tenant did not pay rent for April 2018, so a 10 Day Notice to End Tenancy was served in early April 2018. The Landlord stated that they did not receive notice that the Tenant would be vacating the unit, but found out on April 28, 2018 that he had moved out.

The Landlord called the Tenant at this time and confirmed that he had left the rental unit. A Condition Inspection Report was completed with the Tenant on May 1, 2018 and possession of the rental unit was returned to the Landlord on this date. The Tenant provided his forwarding address in writing on the Condition Inspection Report dated May 1, 2018.

The Landlord is still in full possession of the security deposit in an amount of \$925.00. They applied for dispute resolution on May 7, 2018.

The Landlord provided testimony regarding their efforts to rent the unit after the Tenant moved out. They advertised the rental unit online for \$2,100.00 per month, as soon as they confirmed the Tenant had vacated. The Landlord was unable to find a new Tenant until July 1, 2018. They are asking for April rent in the amount of \$2,100.00 during the time which the Tenant was still residing in the rental unit. They are also asking for lost revenue for May 2018 in the amount of \$2,100.00 due to the Tenant breaking a fixed term agreement and not finding a new tenant for May 2018.

## Analysis

Based on the undisputed testimony and evidence of the Landlord, I accept that rent was not paid for April 2018. As possession of the rental unit was not returned to the Landlord until May 1, 2018, I find that the Tenant occupied the rental unit in April 2018 and therefore owes the Landlord rent in the amount of \$2,100.00.

I also accept the Landlord's undisputed testimony that they attempted to re-rent the unit for May 2018, but were unable to find a new tenant during that time. As the Landlord advertised the unit for rent right away and for the same amount of rent that the Tenant was paying, I find that they attempted to minimize their loss in accordance with Section 7(2) of the *Act*.

*Residential Tenancy Policy Guideline 3 – Claims for Rent and Damages for Loss of Rent* state that when a tenancy agreement is breached, the compensation awarded is to put the landlord in the same position as though the tenant had not breached the agreement. Due to the fixed term tenancy signed by the Tenant and the Landlord that ended on May 31, 2018, I determine that the Landlord experienced a loss from the tenancy ending early. The Landlord attempted to minimize their loss through advertisement for re-rental, but were unable to secure a new tenant for May 2018. As such, I find that the Tenant must compensate the Landlord for this loss pursuant to Section 67 of the *Act*. I find that the Landlord is entitled to \$2,100.00 as compensation for the loss of rent for May 2018.

Section 38(1) of the *Act* states that a landlord has 15 days to either return the security deposit or file for dispute resolution against it, from the later date of the end of tenancy or when the forwarding address was provided in writing. As the Landlord testified that the forwarding address was provided by the Tenant on May 1, 2018, and they applied for Dispute Resolution on May 7, 2018, I find they applied within the 15 days allowable under the *Act*. As such, I determine that they are entitled to retain the security deposit in the amount of \$925.00, in partial satisfaction of the total amount owed.

As the Landlord was successful in their application, I also grant them the recovery of the filing fee paid for this application in the amount of \$100.00. A Monetary Order will be issued to the Landlord in the amount outlined below.

### *Monetary Order Calculations*

April 2018 rent	\$2,100.00
May 2018 rent	\$2,100.00
Recovery of filing fee	\$100.00

Less security deposit	(\$925.00)
<b>Total owing to Landlord</b>	<b>\$3,375.00</b>

### Conclusion

The Landlord is allowed to **retain the security deposit** in partial satisfaction of the total amount owed.

Following the deduction of the security deposit as per the above calculations, and pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** for the balance due in the amount of **\$3,375.00** for rent owed for April 2018 and May 2018, as well as the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms and 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: July 6, 2018

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Residential Tenancy Branch