



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes FFL, MNRL-S

### Introduction

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

- a monetary order for unpaid rent under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant. The landlord gave affirmed evidence that he served the tenant the application, the notice of hearing package and evidence in the presence of a witness on November 30, 2017. Based on the submissions of the landlord, I find the tenant was duly served in accordance to section 89 of the Act. Therefore, I continued in the absence of the tenant.

### Issue to be Decided

Is the landlord entitled to a monetary award for loss of rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on July 1, 2012, and ended on November 18, 2017. The tenant was obligated to pay \$900.00 per month in rent and at the outset of the tenancy the tenant paid a \$450.00 security deposit which the landlord still holds. The landlord testified that the tenant was a good tenant for the first part of her tenancy but due to personal problems she fell behind in her rent. The landlord testified that he tried to work with the tenant to allow her to catch up on the rent. The landlord testified that the tenant advised him that she was expecting a large payout as a result of an unrelated law suit. The landlord testified that he believed her because her lawyer confirmed her story and even provided documentation to the landlord. The landlord advised that when she didn't win her law suit, she advised him that she would not be able to pay. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 6, 2017; the tenant moved out 12 days later. The landlord advised that as of today's hearing the amount of unpaid rent is \$21665.00.

### Analysis

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

The landlord provided extensive documentation, undisputed testimony, receipts and documentation from the tenants' lawyer confirming his testimony. . The landlord has provided sufficient evidence to support his claim and is entitled to \$21665.00. The landlord is also entitled to the recovery of \$100.00 filing fee.

### Conclusion

The landlord has established a claim for \$21,765.00. I order that the landlord retain the \$450.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$21, 315.00. This order may be filed in the Small Claims 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 05, 2018

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Residential Tenancy Branch