



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, MNRL, FFL

### Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlord, the landlord's assistant and the landlord's agent attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

**Commencement of the hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The agent testified that the Application for Dispute Resolution (the Application) and an evidentiary package were sent to each tenant by way of Registered Mail to the rental unit on February 06, 2018. The landlord provided copies of the Canada Post tracking numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants are deemed served with the Application and evidence on February 11, 2018, five days after its registered mailing.

### Preliminary Matters

In the course of the hearing it was discovered that the landlord had already obtained a Monetary Order for the unpaid rent owing for December 2017, January 2018 and February 2018 in a previous hearing with the Residential Tenancy Branch (RTB) as referenced above on the title page of this Decision.

*Res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. The rule provides that when a court of competent jurisdiction has entered a final judgement on the merits of a cause of action, the parties to the suit are bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. A final judgment on the merits bars further claims by the same parties based on the same cause of action.

I find that the landlord's monetary claim for unpaid rent owing for December 2017, January 2018 and February 2018 is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. Therefore, I decline jurisdiction to hear the Application for December 2017, January 2018 and February 2018 unpaid rent as it has already been decided.

Of the remaining monetary claim, the agent requested to amend the Application to include \$1,650.00 for lost rental income for March 2018 and half a month for April 2018. The landlord referred to a new Monetary Order Worksheet dated August 30, 2018, which details these amounts. The agent admitted that the new Monetary Order Worksheet dated August 30, 2018, was not served to the tenants as they vacated the rental unit on February 15, 2018, and the agent does not know where the tenants currently reside.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the landlord did not serve the tenant with the Monetary Order Worksheet dated August 30, 2018, and that the tenants may be prejudiced by this as they did not have a chance to respond to the landlord's evidence.

For the above reason the tenant's Monetary Order Worksheet dated August 30, 2018, is not accepted for consideration and I do not allow the landlord's requested amendment

as I find that the tenants would be prejudiced by the consideration of lost rental income for March 2018 and April 2018 as they were not notified of this claim against them. I find that there is no evidence that the tenants were notified that the landlord intended to pursue lost rental income for March 2018 and April 2018 when the tenants were still in the rental unit as it was not on the Application or mentioned in the previous hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

A tenancy agreement and addendum were provided by the landlord showing that this fixed term tenancy began on October 01, 2017, and was supposed to continue until September 30, 2018. The tenancy agreement indicates a monthly rent in the amount of \$1,100.00, due on the first day of each month with a security deposit in the amount of \$550.00 that the landlord currently retains.

Section 13 of the addendum indicates that the tenant will pay \$1,000.00 as liquidated damages and not as a penalty. The clause goes on to say that the liquidated damages are an agreed pre-estimate of the landlord's costs or re-renting the rental unit.

The landlord also provided in evidence:

- A copy of a Monetary Order Worksheet dated February 02, 2018. In addition to the unpaid rent for December 2017, January 2018 and February 2018 which has already been decided in a previous hearing, the landlord requests \$700.00 in compensation for management fees and the filing fee as well as \$750.00 for liquidated damages as per the tenancy agreement;
- A copy of an invoice from the agent to the landlord for expenses including management fees and costs related to making an application for the dispute resolution hearing including but not limited to transportation to office and serving the tenants.

The agent submitted that the landlords are seeking management fees and the filing fee in the amount of \$700.00 and for liquidated damages in the amount of \$750.00.

### Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that, although the landlord has provided an invoice for amounts owing to the agent, the landlord has not actually provided any evidence that the landlord has paid the amount on the invoice to the agent and that they have actually incurred a monetary loss for the management fees and the fees associated with preparation for this hearing.

Even if the landlord had provided proof of payment for the management fees to the agent and for the preparation for this hearing, I find that the Act and Regulations do not allow for the recovery of the costs associated to the preparation of a hearing other than the fee for filing the application. I further find it is not the tenant's responsibility to pay for the management for their rental unit as the management fees are not a result of the tenants' actions or neglect in violation of the Act. I find that the management fees are payable whether the tenant has caused a loss under the Act or not. I find that the landlord's monetary claims for management fees and for preparation for this hearing are the landlord's responsibility for the cost of doing business and must be absorbed by the landlord.

For the above reason, the landlord's Application for management fees and fees for preparation for this hearing are dismissed, without leave to reapply.

Residential Tenancy Policy Guideline #4 establishes that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement and that the amount must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to be a penalty and as a result will be unenforceable.

Having reviewed the evidence and undisputed testimony, I find that the tenants have breached their tenancy agreement by failing to pay the monthly rent. I find that the tenants agreed to a liquidated damage clause in the amount of \$1,000.00 and that the amount of \$750.00 claimed by the landlord is a genuine pre-estimate of the landlord's loss and not a penalty.

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. Based on the landlord's evidence and undisputed testimony, I find that the landlord is entitled to a monetary award in the amount of \$750.00 for liquidated damages.

As the landlord was successful in their application, they may recover the filing fee related to this application.

#### Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour in the amount of \$850.00, which allows the landlord to recover \$750.00 for liquidated damages and to recover the \$100.00 filing fee for this Application. The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: September 25, 2018

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Residential Tenancy Branch