



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

On June 18, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

B.G. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing. B.G. provided a solemn affirmation.

The Landlord’s agent advised that he served the Tenant the Notice of Hearing package and evidence by hand on June 30, 2018. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing package and evidence.

The Landlord’s agent was given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The Landlord’s agent stated that the tenancy started on May 15, 2018 as a month to month tenancy and he advised that the Tenant vacated the rental unit on June 5, 2018. Rent was established at \$900.00 per month, due on the first day of each month. A security deposit of \$450.00 was also paid.

He submitted that the Tenant paid \$500.00 for the half of May rent that he occupied the rental unit and that he called the Landlord on May 28, 2018 advising that he would be ending the tenancy. The Tenant vacated the rental unit on June 5, 2018 and met with the Landlord's agent on June 15, 2018 to conduct a move-out inspection report. The Tenant provided a forwarding address in writing on June 15, 2018. The Landlord's agent stated that he was able to re-rent the rental unit on June 15, 2018 but the Tenant did not pay rent for June 2018, so the Landlord suffered half a month's rental loss. He is seeking to apply the security deposit towards the unpaid half month's rent for June 2018.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was provided on June 15, 2018 and that the Landlord's agent made the Application to keep the deposit on June 18, 2018. As such, I am satisfied that the Landlord complied with the requirements of the *Act*.

The next issue I will address is with respect to the Landlord's agent's claim for lost rent. The undisputed evidence is that the tenancy effectively ended when the Tenant vacated the rental unit on June 15, 2018. Sections 44 and 45 of the *Residential Tenancy Act* set out how tenancies end. It also specifies that a Tenant must give written notice to end a tenancy.

As the undisputed evidence is that the Tenant ended the tenancy without the proper written notice, I am not satisfied that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. Furthermore, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord suffered a rental loss for half of June 2018 rent.

Therefore, I am satisfied that the Tenant is responsible half of June 2018 rent, totaling \$450.00. However, as the Tenant had paid \$50.00 extra for the half of May 2018 rent, I am satisfied that the Tenant is responsible for the balance owing of **\$400.00**.

As the Landlord was successful in their claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

June 2018 rental loss	\$450.00
May 2018 rent overpayment	-\$50.00
Recovery of filing fee	\$100.00
Security deposit	-\$450.00
<b>TOTAL MONETARY AWARD</b>	<b>\$50.00</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$50.00** 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: September 28, 2018

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Residential Tenancy Branch