



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent, utilities, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Application, the Notice of Hearing, and the evidence package were sent to the Tenant on March 8, 2018, by registered mail and provided me with the registered mail tracking number. The Agent testified that the registered mail was never picked up and was ultimately returned. With the consent of the Agent I logged into the mail service provider’s website and verified that the registered mail was sent as described above, that a notice card was left on March 12, 2018, and that a final notice was left on March 20, 2018, before the package was returned to sender.

The Agent testified that the registered mail was sent to the forwarding address provided by the Tenant, and pointed me to an e-mail dated October 25, 2018, in which the Tenant provides their forwarding address. The Agent stated that on November 22, 2018, the Tenant cashed the security deposit and pet damage deposit cheque mailed to her that address and that invoices for unpaid December and January rent were also mailed to that address, neither of which was returned to sender. Further to this, the Agent stated that the Landlord has a branch in the community in which the Tenant’s forwarding address is located and that a different agent for the Landlord in that

community attended the building listed as the Tenant's forwarding address in March of 2018, and verified that the Tenant was still listed as a resident on the intercom system at that time. As a result, the Agent stated he suspects the Tenant was attempting to avoid service by failing to pick up the registered mail in March of 2018.

Section 90 of the *Act* states that documents sent by registered mail are deemed received five days later and Residential Tenancy Policy Guideline (the "Policy Guideline") #12 states that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail does not override the deeming provision. Based on the testimony and documentary evidence before me, I find that the Tenant was attempting to avoid service by failing to pick up the registered mail and as a result, I find that the Tenant was deemed served the Application, the Notice of Hearing, and the documentary evidence before me from the Landlord on March 13, 2018, five days after they were sent by registered mail.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, copies of the decision and any order issued in favor of the Landlord will be e-mailed to him at the e-mail address confirmed in the hearing.

#### Issue(s) to be Decided

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

Is the Landlord entitled to recovery of the filing fee?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed-term tenancy commenced on September 1, 2017, at a monthly rental rate of \$2,595.00, and was not set to end until August 31, 2018. The tenancy agreement also states that a security deposit and a pet damage deposit in the amount of \$1,297.50 each were paid and that there is a \$325.00 liquidated damages fee for breaking the tenancy agreement.

The Agent testified that 55 days after the commencement of the tenancy, the Tenant vacated the rental unit due to a work transfer. In support of this testimony the Agent

provided a copy of a move-out inspection report and a Notice to vacate form completed and signed by the Tenant stating that they give notice to vacate the rental unit effective October 30, 2017, and acknowledge that they will be responsible for a \$325.00 liquidated damages fee, \$2,595.00 in rent per month, and the cost of utilities until the unit is re-rented. Although the move-out condition inspection was completed on October 31, 2018, the Agent stated that this was completed with an agent for the Tenant as the Tenant had already moved out. The Agent also testified that the Tenant previously paid the \$325.00 liquidated damages fee and that the balance owed to her for the security deposit and pet damage deposit were already refunded.

The Agent stated that due to the price point of the rental unit, construction in the area, and the time of year, the rental unit was not re-rented until February 1, 2018, despite their best efforts. The Agent provided a detailed timeline of showings and testified that although there was interest in the property, only a few of the viewings resulted in applications and that of the applications received, only a few met the criteria for acceptance. Further to this the Agent stated that only one Applicant who met the criteria for acceptance followed through with the entire process and that the rental unit was subsequently rented to them for February 1, 2018 at \$2,400.00 per month. The Agent stated that the cost of rent was reduced in December when the unit had not yet been re-rented and that despite the fact that the unit has been re-rented at a lower rate, the Landlord is not seeking compensation for loss of rent between February 1, 2018, and the end of the Tenant's fixed term. Instead the Agent stated that the Landlord is only seeking \$2,595.00 per month for December of 2017 and January of 2018, plus \$422.50 in utilities. In support of these costs the Agent pointed to the tenancy agreement and copies of utility bills in the documentary evidence before me.

### Analysis

I accept the Agent's undisputed testimony, in conjunction with the documentary evidence before me that they took reasonable steps to re-rent the unit as soon as possible and that rent and utilities for December of 2017 and January of 2018 remain unpaid in the amount of \$5,612.60. I also find that that the Tenant breached the terms of the fixed-term tenancy agreement when she unilaterally ended her tenancy early. Section 7 of the *Act* states that if a landlord or a tenant does not comply with the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further to this, Policy Guideline #3 states that damages awarded for loss of rent should be sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

Based on the undisputed documentary evidence and testimony before me for consideration and pursuant to the above noted sections of the *Act* and the Rules of Procedure, I therefore find that the Landlord is entitled to compensation in the amount of \$5,612.60 for unpaid rent and utilities. As the Landlord was successful in their Application, I also find that they are entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result, the Landlord is therefore entitled to a Monetary Order in the amount of \$5,712.60, pursuant to section 67 of the *Act*.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$5,712.60**. 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: September 25, 2018

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Residential Tenancy Branch