



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, FFL

### Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on June 9, 2018. The Landlords applied for a monetary order for damages or compensation under the *Act*, and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlords attended the hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenant by registered mail on June 14, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Are the Landlords entitled to the return of their filing fee for this application?

### Background and Evidence

The Landlords testified that the tenancy began on February 1, 2018, as a month to month tenancy. Rent in the amount of \$1,275.00 was to be paid by the first day of each month and the Landlords had been given a \$637.50 security deposit. The Landlords provided a copy of the tenancy agreement into documentary evidence.

The Landlords testified that they had issued a 10-Day Notice to End the Tenancy for Unpaid Rent or Utilities (the "Notice"), on April 4, 2018. The Notice indicated that the Tenant was outstanding \$1,275.00 in rent. The Landlord provided a copy of the Notice into documentary evidence. The Landlords testified that the Tenant was also outstanding \$60.00 from the March rent and that the Tenant had not paid the Rent for May 2018. The Landlords testified that the Tenant moved out of the rental unit on June 1, 2018, and that the Tenant's security deposit had been returned to the Tenant the same day. The Landlords are seeking to recover the outstanding rent of \$2,610.00, comprised of \$60.0 for March, \$1,275.00 for April 2018, and \$1,275.00 for May 2018.

Furthermore, the Landlords testified that they had not been able to find a new renter to take over the rental unit until July 1, 2018, due to the actions of the Tenant. The Landlords testified that the Tenant had changed the locks on the rental unit, and refused to allow the Landlords in for showings during May 2018. As a result, the Landlords had to cancel showings on May 11 and 12, 2018 and were not able to show the unit to prospective new renters until the Tenant moved out. The Landlords are seeking \$1,275.00 for the loss of rental income for June 2018, due to the Tenant preventing them from showing the unit. The Landlords provided a witness statement regarding the notices of showings and their inability to gain entry into the rental unit, into documentary evidence.

Additionally, the Landlords testified that they are also seeking to recover, \$50.00 in costs to re-key the rental unit, \$300.00 in cleaning costs as the Tenant returned the rental unit to the dirty, and \$50.00 in Canada Post cost for sending the Tenant registered mail. The Landlords provided copies of the receipts for cleaning the rental unit and for sending registered mail through Canada post into documentary evidence.

The Landlords also testified that there had been an ongoing dispute between this Tenant and the renters in the upstairs unit. The Landlords testified that the upstairs renters moved out with short notice due to how the Tenant was treating them. The Landlords are requesting \$1,000.00 in the loss of rental income from the upstairs unit

due to those renters moving out early. The Landlords provided a copy of the notice given to them by the upstairs renters, detailing why they were leaving, into documentary evidence.

### Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I accept the undisputed testimony of the Landlords that the Tenant failed to pay her full rent for March 2018 and did not pay the rent for April and May 2018, and that they were unable to re-rent the unit for June due to the Tenant restricting their access to the rental unit.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant breached section 26 of the *Act* when she did not pay her rent in accordance with the tenancy agreement. I find that the Landlords have provided sufficient evidence to prove the value of their losses and that they took reasonable steps to minimize those losses due to the Tenant's breach. Therefore, I award the Landlords the outstanding rent for March, April and May 2018, in the amount of \$2,610.00.

I also find that the Tenant breached section 31 of the *Act* when she changed the locks to the rental and restricted the Landlords' access. I find that the Landlords have provided sufficient evidence to prove the value of that loss in relation to the loss of rental income for June 2018 and that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I award the Landlords the loss of rental income for June 2018, in the amount of \$1,275.00.

However, in the absence of the receipt to prove the expense associated with having the locks changed. I find that the Landlords have not provided sufficient evidence to prove the value of that loss. Therefore, I decline to award the Landlords the return of the \$50.00 they requested in costs to have the locks changed.

Section 37 of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy. I note that the Landlords did not provide a move-in/move-out inspection report into documentary evidence. The move-in/move-out inspection report is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy and is a required document pursuant to section 23 and 35 of the *Act*. In the absence of that document, I find that the Landlords have not provided sufficient documentary evidence to show that they suffered a loss due to the condition of the rental unit at the end of the tenancy. Therefore, I decline to award the Landlords the return of the cleaning cost of \$300.00.

As for the Landlords request for the recovery of \$1,000.00 in the loss of rental income, for the upstairs rental unit. I have carefully reviewed all of the documentary evidence provided by the Landlords, and I find that the Landlords have not provided sufficient evidence to satisfy me that there was a breach of the *Act* but the Tenant that caused the loss of rental income for the upstairs unit. Therefore, I decline to award the Landlords the requested \$1,000.00 loss of rental income for the upstairs rental unit.

The Landlords were advised during the hearing that the costs associated with sending registered mail through Canada Post are not recoverable through these proceedings. I dismiss the Landlords' request for the recovery of \$50.00 in Canada Post costs.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$3, 885.00; consisting of the outstanding rent for March, April and May 2018, and the recovery of their loss of rental income for June 2018.

As the Landlords were partially successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for their application.

<u>Item</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Rent for March	\$60.00	100%	\$60.00
Rent for April	\$1,275.00	100%	\$1,275.00
Rent for May	\$1,275.00	100%	\$1,275.00
Lost of Rental income for June	\$1,275.00	100%	\$1,275.00
Lost Rental Income Upstairs unit	\$1,000.00	0%	\$0.00
Cleaning	\$300.00	0%	\$0.00
Canada post	\$50.00	0%	\$0.00
New Lock	\$50.00	0%	\$0.00
			\$3,885.00
			Filing fee \$100.00
			<b>Due</b> \$3,985.00

### Conclusion

I find for the Landlords under sections 67 and 72 of the Act. I grant the Landlords a **Monetary Order** in the amount of **\$3,985.00**. The Landlords are 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 10, 2018

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Residential Tenancy Branch