



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIGHTHOUSE REALTY INT.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, 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 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 left the teleconference hearing connection open until 9:44 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that they sent the tenants individual copies of the landlord's dispute resolution hearing package and written evidence by registered mail on October 12, 2018. The landlord provided the Canada Post Tracking Number to confirm the mailings, which the landlord said were returned unclaimed. Based on the landlord's undisputed evidence, I find that the tenants were deemed served with this material in accordance with sections 88, 89 and 90 of the *Act* on October 17, 2018, the fifth day after their registered mailing.

As the landlord indicated in the description of their application, included in the Notices of Hearing that they were seeking a monetary Order for unpaid rent, then totaling \$7,050.00, I consider the tenants notified of the monetary aspect of the landlord's application. At the hearing, the landlord testified that \$10,525.00 in unpaid rent

remained owing as of October 31, 2018. As the tenants would be aware that no further rent had been paid since the landlord applied for dispute resolution, I have allowed the landlord's oral request to increase the amount of the landlord's claim for unpaid rent to \$10,525.00.

The landlord testified that an arbitrator appointed pursuant to the *Act*, has already issued an Order of Possession to the landlord on September 27, 2018. on the basis of a 1 Month Notice to End Tenancy for Cause (see reference above). For that reason, the landlord withdrew their application for an Order of Possession on the basis of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to the tenants on August 20, 2018. The landlord's application for an Order of Possession on the basis of the 10 Day Notice is hereby withdrawn.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

The landlord testified that this month-to-month tenancy began on February 15, 2018. Monthly rent is set at \$3,500.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,750.00 security deposit paid on or about February 15, 2018.

The landlord's 10 Day Notice identified \$3,525.00 in rent owing as of August 20, 2018. The landlord testified that since the issuance of the 10 Day Notice, no further payments have been made by the tenants towards this tenancy. The landlord entered into written evidence a copy of a tenant rent ledger to confirm this testimony. For the months of September and October 2018, \$7,000.00 in rent has become owing.

#### 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

in this case, I find that there is undisputed sworn testimony supported by written evidence that the tenants have not paid the \$3,525.00 in rent that is owed as of August 20, 2018, and a further \$7,000.00 in rent that became owing for September and October 2018. On this basis, I allow the landlord's application for a monetary award for these amounts of unpaid rent.

Although the landlord's application did not request authorization to retain the tenants' security deposit, in accordance with section 72(2) of the *Act*, I order the landlord to retain that deposit in partial satisfaction of the monetary award issued to the landlord.

As the landlord has been successful in this application, I allow the landlord to recover the filing fee from the tenants.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee for this application, and to retain the security deposit for this tenancy:

<b>Item</b>	<b>Amount</b>
Unpaid Rent Owing as of August 1, 2018	\$3,525.00
Unpaid Rent September 2018	3,500.00
Unpaid Rent October 2018	3,500.00
Less Security Deposit	-1,750.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$8,875.00</b>

The landlord is provided with these Orders 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

these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession based on the 10 Day Notice is withdrawn.

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: November 06, 2018

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Residential Tenancy Branch