



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Amendment

Although the landlord did not specifically indicate on its application a monetary order for damage, I find that it is evident the landlord was seeking this order based on the text written in the details box of the application and the documentary evidence provided. During the hearing the tenant confirmed she understood a \$200.00 damage claim formed part of the landlord's application. In accordance with section 64(3) of the *Act*, I amend the landlord's application to include a monetary order damage.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damage?

Is the landlord authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 3, 2016 on a fixed term until September 30, 2017 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$725.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$370.00 at the start of the tenancy, which the landlord still retains in trust.

The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") dated June 8, 2018 with an effective date of June 21, 2018. During the hearing, the parties agreed that the tenant vacated the unit pursuant to the 10 Day Notice by June 21, 2018. The parties further agreed that the tenant has not paid June rent in the amount of \$725.00 to date. Accordingly, the landlord seeks a monetary order in the amount of \$725.00 for unpaid June rent.

The landlord testified that he is seeking \$200.00 in damages for overall damage in the form of wall holes, dirty carpet and cleaning. The tenant testified that she did not damage the unit and that any damage the landlord has referred to is pre-existing damage.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

### Analysis

Section 26 of the *Act* requires the tenant to pay rent when it is due under the tenancy agreement, which is the 1st day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$725.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent for June 2018. Therefore, I find that the landlord is entitled to \$725.00 in rent.

Under 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. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

In the absence of documentary evidence in the form of inspection reports, photographs or invoices I find the landlord had failed to establish his claim for damages. For this reason, I dismiss the landlord's monetary claim for damages, without leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee for a total award of \$775.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$370.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$405.00.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$405.00.

The landlord's claim for compensation for damage is dismissed without leave to reapply.

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 23, 2018

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Residential Tenancy Branch