



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL, FFL

### Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the “Act”) in response to a successful application filed by the landlord for review of a decision dated August 20, 2018. In the original decision, the landlord’s monetary claim for rent and utilities were dismissed. The landlord was awarded \$600.00 in damages/filing fee and ordered to return \$300.00 of the \$900.00 security deposit in the form of a monetary order to the tenant. The original decision and orders were subsequently suspended by way of a review consideration decision dated September 5, 2018 pending the outcome of this review hearing.

This review hearing addresses the landlord’s application pursuant to section 67 of the *Act* for unpaid rent, loss of rent and unpaid utilities. The reviewing Arbitrator ordered this review hearing on the basis of these limited issues only; the original Arbitrator’s decision with respect to the landlord’s claim for damage to the rental unit is not subject to this review hearing.

The landlord and tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the tenant confirmed that he had received the landlord’s evidence. As the tenant did not raise any issues regarding service of the landlord’s application or evidence, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Tenant’s Evidence Package

The tenant testified that on July 14, 2018 at 9:00 a.m., he personally served the landlord with a written evidence package. The tenant testified that his son accompanied him, in making the delivery. The tenant’s son provided witness testimony that he observed his

father serve an evidence package to the landlord at the landlord's residence on July 14, 2018 at 9:00 a.m.

The landlord testified that she did not receive the tenant's written evidence package. In support of her position, the landlord has provided a copy of her timecard which indicates she was at work on July 14, 2018 from 5:30 a.m. to 1:55 p.m.

In reply, the tenant clarified that he served the evidence package to a woman who identified herself as the landlord. The tenant inferred that the evidence package was received by the landlord on the basis that the landlord required it to file a review. In response, the landlord testified that she is the sole female resident of the household and did not require the evidence package to file the review.

Although the tenant provided witness testimony as proof of service, I prefer the evidence of the landlord. The landlord's timecard in conjunction with her testimony has persuaded me on the balance of probabilities that the landlord was not home at the time of the alleged delivery and therefore did not receive the tenant's evidence package. In response to the tenant's allegation that the evidence package was required to file a review, I find he is mistaken. The landlord attended the previous hearing and was privy to the tenant's testimony which formed the basis of the review filed by the landlord.

Pursuant to Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, a respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch. Because the tenant did not serve his evidence and the landlord did not receive the tenant's evidence package, I have not relied on it to form any part of my decision.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent, loss of rent and unpaid utilities?

#### Background and Evidence

The landlord submitted a copy of the tenancy agreement as part of her documentary evidence. Based on this agreement, the tenancy began on April 1, 2017 on a month-to-month basis. Rent in the amount of \$1,850.00 was payable on the first of each month. Heat and electricity in the amount of 50% was to be paid by the tenant. During the hearing, the parties agreed that the tenant typically paid an extra \$100.00 each month

towards utilities with the understanding that any outstanding utilities would be settled at a later date.

The landlord seeks compensation in the amount of \$4,218.56, including the following;

Item	Amount
Unpaid December Rent	\$1,850.00
Loss of January Rent	\$1,850.00
Utilities	\$518.56
Total Claim	\$4,218.56

The landlord testified that the tenant vacated the unit at the end of December 2017, without written notice or payment of December rent. The landlord testified that as a result, the parties did not have an opportunity to settle the outstanding utilities. The landlord testified that after completing the necessary cleaning and repairs, she re-rented the unit effective February 6, 2018. In support of her position, the landlord submitted copies of the utility bills.

The tenant testified that on November 25, 2017 he gave written notice to the landlord's husband, ending the tenancy January 1, 2018. The tenant presented his wife, as a witness who testified that on either November 24 or 25, 2017 she observed her husband give written notice to the landlord's husband outside the rental unit. The tenant testified that on November 27, 2017, upon direction from him, his son withdrew \$2,200.00 from his bank account to assist with December rent and outstanding utilities. The tenant's son testified to this; stating he went to the bank on November 27, 2017, withdrew money and gave it to his father this same date. The tenant testified that he used this money in addition to his own \$200.00 and personally provided the landlord's husband with \$2,400.00 on the evening of November 27, 2017. The tenant explained that this payment served to pay the outstanding utilities and December rent.

The landlord presented her husband as a witness. The landlord's husband testified that he did not receive written notice nor a December rent and utility payment totaling \$2,400.00 on any date.

### 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 this case, the onus is on the applicant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

In the absence of documentary evidence related to unpaid rent, I am left to consider the conflicting testimony of the parties and their witnesses. The landlord and her witness have convinced me of their credibility. She and her witness were consistent in their testimony; they did not waiver in their version of events. The tenant's witness could not recall the specific date in which notice was given. The credibility of the tenant and tenant's other witness is questionable at best, as documentary evidence has served to invalidate their affirmed testimony at the outset of the hearing. Based on the first hand witness testimony of the landlord's husband, which refutes the tenant's testimony, I am satisfied that the tenant failed to provide written notice or payment of December rent and outstanding utilities.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. I find that the landlord has proved that the current rent for this unit is \$1,850.00. Therefore, I find that the landlord is entitled to \$1,850.00 for December rent.

A landlord may seek compensation for loss of rent when a tenant gives less than one full month written notice and when a tenant leaves the unit damaged which results in the landlord suffering a vacancy. Based on my finding that written notice was not given and the previous Arbitrator's finding that the tenant left the unit damaged, I find the landlord is entitled to \$1,850.00 for loss of January rent.

Upon review of the submitted tenancy agreement and relevant utility bills, I find the landlord is entitled to \$368.56 in utilities (\$1,068.56 total utilities - \$700.00 utilities paid monthly). Because the landlord included an estimate of the January utilities in the amount of \$150.00 but failed to provide a copy of the January bills, I have not included it in the monetary award.

### Conclusion

The original decision in relation to unpaid rent, loss of rent and unpaid utilities is set aside.

I issue a monetary order in the landlord's favour in the amount of \$4,068.56 for the following items:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$1,850.00
Loss of January Rent	\$1,850.00
Utilities	\$368.56
Total Claim	\$4,068.56

The original decision with respect to damages, the filing fee and security deposit were not subject to this review hearing. Accordingly, the monetary order in favour of the tenant in the amount of \$300.00, dated August 20, 2018 still stands.

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 14, 2018

---

Residential Tenancy Branch