



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, MNSD, FFL

### Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

The tenants and two agents for the landlord ("agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenants confirmed receiving the evidence from the landlords and that they had the opportunity to review that evidence. The tenants also confirmed that they did not serve the landlords with any documentary evidence in response to the landlords' application.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

### Issues to be Decided

- Should the landlords be granted a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy agreement began on July 15, 2017 and was scheduled to end on July 31, 2018 requiring vacant possession; however, based on the changes to the *Act* as of December 11, 2017, fixed-term tenancies automatically default to a month to month tenancy when there is no term in the tenancy agreement indicating in writing that the landlords will be occupying the rental unit at the end of the tenancy. In the matter before me, the tenancy agreement did not include a written term indicating that the landlords would be occupying the rental unit at the end of the fixed term tenancy. The parties agreed that the monthly rent during the tenancy was \$3,800.00 per month and was due on the first day of each month. The parties also agreed that the tenants paid a security deposit of \$1,900.00 and a pet damage deposit of \$1,900.00 at the start of the tenancy which the landlords continue to hold.

The parties confirmed that on July 1, 2018 the tenants sent a text to the landlords indicating that they were giving their 1 Month Notice to End Tenancy and would be vacating the rental unit on July 31, 2018. The tenants admitted that they did not pay the last month of rent for July 2018 in the amount of \$3,800.00. The landlords are claiming for the unpaid rent for July 2018 plus the filing fee.

The tenants refused to surrender their security deposit and pet damage deposit in writing to the landlords to offset the unpaid July 2018 rent which is supported by the condition inspection report which reads in part:

“Don’t agree with damage deposit being withheld. Refer to emails.”

[Reproduced as written]

The landlords’ position is that notice to vacate served on July 1, 2018 is late notice for an effective vacancy date of July 31, 2018 and in addition, as the tenants continued to occupy the rental unit for the month of July 2018 the tenants owe rent as a result.

The landlords served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the tenants which the tenants did not dispute. The tenants eventually vacated the rental unit on July 19, 2018 according to the landlords’ evidence.

### Analysis

Based on details of the application and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Monetary claim of landlords** – I find the tenants breached section 26 of the *Act* which requires that monthly rent be paid on the date that it is due in accordance with the tenancy agreement. There is no dispute that the tenants occupied the rental unit until July 19, 2018. Therefore, I find the tenants owe \$3,800.00 in unpaid rent as I find the landlords have met the burden of proof. I grant the landlords **\$3,800.00** for unpaid July 2018 rent as a result. As the landlords continue to hold the tenants' security deposit of \$1,900.00 and pet damage deposit of \$1,900.00 **I authorize** the landlords to retain both deposits pursuant to section 38 and 67 of the *Act* in the total amount of \$3,800.00 in full satisfaction of the \$3,800.00 owing by the tenants for July 2018 unpaid rent. As the landlords' filed their application on July 20, 2018 I find the landlords complied with section 38 of the *Act*.

As the landlords' application had merit, I grant the landlords the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. Therefore, I grant the landlords a monetary order pursuant to section 67 of the *Act* in the amount owing by the tenants to the landlords in the amount of **\$100.00**.

### Conclusion

The landlords' application is fully successful.

I find that the landlords have established a total monetary claim of \$3,900.00 which is comprised of \$3,800.00 for unpaid July 2018 rent, plus the \$100.00 filing fee. The landlords have been authorized to retain the tenants' combined deposits in partial satisfaction of the total monetary claim. I grant the landlords a monetary order under section 67 for the balance due by the tenants to the landlords of \$100.00. If the tenants failed to pay that amount, this order must be served on the tenants and the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2018

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Residential Tenancy Branch