



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MIDLAND MAINTENANCE SERVICES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 1, 2018, wherein the Landlord sought monetary compensation from the Tenants for unpaid rent, authority to retain their security deposit and recovery of the \$100.00 filing fee.

The hearing was scheduled for 9:30 a.m. on December 10, 2018. Only the Landlord's agent, D.N., called into the hearing. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 9:50 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that he served the Tenants with the Notice of Hearing and the Application on November 5, 2018 by registered mail. A copy of the registered mail tracking numbers for the packages sent to both Tenants is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of November 10, 2018 and I proceeded with the hearing in their absence. Notably, during the hearing on November 15, 2018 (which occurred before me), the parties discussed the hearing on December 10, 2018 such that I find the Tenants were aware of the hearing and their obligation to attend.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matters—Relief Sought

The parties appeared before me on November 15, 2018 at which time I granted the Landlord an Order of Possession. The file number for that hearing is provided on the cover page of this my Decision. The Landlord's Agent confirmed that the Tenant have yet to move out although they have been packing and moving their items.

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for unpaid rent?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee paid for their Application for Dispute Resolution?

#### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. Although this agreement did not indicate the amount of rent which was due, at the hearing on November 15, 2018 the parties agreed that rent was due in the amount of \$800.00 per month. The agreement provided that the Tenants paid a \$400.00 security deposit.

The Landlord's agent testified that at the time of the hearing before me on December 10, 2018 the following amounts were owed for rent:

Month	Amount owing
May 2017	\$400.00
July 2017	\$100.00
January 2018	\$255.00
March 2018	\$85.00
May 2018	\$100.00
September 2018	\$800.00
October 2018	\$200.00
November 2018	\$800.00
December 2018	\$800.00
<b>TOTAL</b>	<b>\$3,540.00</b>

The Landlord's Agent further stated that following the November 15, 2018 hearing he discussed the issue of the unpaid rent with the Tenants. Although it was his hope that an agreement could be reached regarding the repayment of the amounts owing, the parties were not successful in reaching an agreement.

The Landlord also sought authority to retain the \$400.00 security deposit towards the amounts claimed as well as recovery of the \$100.00 filing fee.

Although served with the Notice of Hearing and Application, the Tenants failed to attend the December 10, 2018 hearing to dispute the Landlord's Agent's testimony.

### Analysis

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows.

I find the Tenants were obligated to pay rent in the amount of \$800.00 per month.

I accept the Landlord's undisputed testimony that at the time of the hearing on December 10, 2018 the Tenants owed the sum of \$3,540.00 for rent as set out previously in my Decision.

Pursuant to section 26 of the *Residential Tenancy Act*, a tenant must not withhold rent, even if the landlord is in breach of the tenancy agreement or the *Act*, unless the tenant has some authority under the *Act* to not pay rent. In this situation the Tenants had no authority under the *Act* to not pay rent.

I therefore find that the Landlord is entitled to monetary compensation in the amount of \$3,540.00 for unpaid rent. Having been successful, the Landlord is also granted recovery of the \$100.00 filing fee for a total award of \$3,640.00.

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenants' \$400.00 security deposit and I grant the Landlord a Monetary Order for the balance due in the amount of **\$3,240.00**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Landlord's request for an Order of Possession is no longer required as the Landlord was granted such an Order at a hearing on November 15, 2018.

The Landlord's request for a Monetary Order for unpaid rent and recovery of the filing fee is granted. The Landlord may retain the security deposit and is granted a Monetary Order for the balance due in the amount of **\$3,240.00**.

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: December 10, 2018

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Residential Tenancy Branch