



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, OPC, FFL

### Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants' pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on November 7, 2018 she forwarded the landlord's application for dispute resolution and supporting documents via registered mail to the tenants. The landlord provided Canada Post receipts and tracking numbers as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application and supporting documents on November 12, 2018, the fifth day after their registered mailing

At the outset of the hearing the landlord testified that they were issued an order of possession at a previous hearing and the tenants vacated the rental unit sometime around November 25, 2018. Consequently, the landlord is no longer seeking an order of possession and this portion of the landlord's application is dismissed without leave to reapply.

Issue(s) to be Decided

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

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

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on February 1, 2017 on a fixed term until January 31, 2018 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,716.00 was payable on the first of each month. The tenants remitted a security and pet deposit in the total amount of \$1,650.00 at the start of the tenancy, which the landlord still retains in trust.

The landlord seeks a monetary order of \$3,432.00 for October 2018 and November 2018 unpaid rent. The landlord claimed that the tenants did not pay rent for the above two months. The landlord seeks a monetary order of \$51.48 for an irrigation charge the landlord stated the tenants were responsible for.

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

Analysis

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. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *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 \$1,716.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent for October 2018 and November 2018. Therefore, I find that the landlord is entitled to \$3,432.00 in rent. In regards to the landlord's claim for recovery of the irrigation fee, I find this claim falls under an application for compensation for loss which in this case the landlord did

not apply for. As such, this portion of the landlord's claim is dismissed with leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security and pet deposit in the total amount of \$1,650.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,782.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,882.00.

### Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$1,882.00 against the tenant.

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 14, 2018

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Residential Tenancy Branch