



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing was convened as a result of the landlord's 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 retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord MG ("agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service via a process server on October 4, 2018 at 5:05 pm at the address listed on the cover page of this decision for ease of reference. Based on the above, I find the tenant was sufficiently served in accordance with the *Act* on October 4, 2018. As the tenant failed to attend the hearing, I consider this matter to be undisputed by the tenant. The hearing continued without the tenant present.

### Preliminary and Procedural Matters

The agent testified that in addition to the rent owed for May and June of 2018, the landlord suffered a loss of September 2018 rent by the tenant refusing to vacate the rental unit based on an Order of Possession, which required a Writ of Possession being obtained and the tenant was eventually forcibly removed from the rental unit by way of a Court Bailiff on September 13, 2018. Therefore, the agent requested to amend the

application to include loss of rent for September 2018 of \$675.00. I find that this request to amend the application does not prejudice the tenant as the tenant would be aware or ought to be aware that the landlord would suffer a loss of September 2018 rent by the tenant refusing to vacate based on the Order of Possession served upon the tenant. Therefore, pursuant to section 64(3) of the *Act*, I amend the application to \$2,025.00, which consists of unpaid rent or loss of rent of \$675.00 for the months of May, June and September of 2018.

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

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord 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 began on September 1, 2017 and reverted to a month to month tenancy after February 28, 2017. Monthly rent in the amount of \$675.00 was due on the first day of each month. The tenant paid a security deposit of \$337.50 at the start of the tenancy, which the landlord continues to hold.

The landlord's amended monetary claim of \$2,025.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent for May 2018	\$675.00
2. Unpaid rent for June 2018	\$675.00
3. Loss of rent for September 2018	\$675.00
<b>TOTAL</b>	<b>\$2,125.00</b>

Regarding items 1, 2 and 3, the agent testified that the tenant failed to pay rent of \$675.00 for May and June of 2018. The agent stated that the tenant did pay rent for July and August of 2018 and then no money for use and occupancy of the rental unit for September 2018, and that the tenant was forcibly removed from the rental unit by way of a Writ of Possession submitted in evidence, on September 13, 2018.

In addition, the landlord is seeking the recovery of the filing fee of \$100.00 under the *Act*.

### Analysis

Based on the undisputed documentary evidence of the landlord and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was deemed served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, and taking into account the undisputed testimony before me, I find the landlord's application is fully successful in the amount of **\$2,025.00** as claimed. I find the tenant breached section 26 of the *Act* which requires a tenant to pay rent on the date that it is due in accordance with the tenancy agreement. Also, I find the tenant failed to comply with the Order of Possession by refusing to vacate the rental unit which resulted in the landlord having to apply for a Writ of Possession. The landlord has not claimed for the costs to hire a Court Bailiff. As the landlord's application is successful, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. Based on the above, I find the landlord has established a total monetary claim of **\$2,125.00**.

The landlord continues to hold the tenant's security deposit of \$337.50, which has not accrued any interest to date.

**I authorize** the landlord to retain the tenant's full security deposit of \$337.50 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,787.50**. This amount is comprised of \$2,025.00, plus the \$100.00 filing fee, less the \$337.50 security deposit.

Conclusion

The landlord's amended application is fully successful.

The landlord has been authorized to retain the tenant's full security deposit of \$337.50 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,787.50 as described above. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

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: January 31, 2019

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Residential Tenancy Branch