



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, MNDCL, 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 pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 20 minutes. The landlord 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 testified that on October 5, 2018 he forwarded the landlord's application for dispute resolution hearing package ("application") via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number 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 tenant has been deemed served with the application and supporting documents on October 10, 2018, the fifth day after their registered mailing.

The landlord testified that on January 8, 2019 he forwarded an amendment via registered mail to the tenant. The landlord provided the Canada Post tracking number into oral evidence to verify this method of service; this number is detailed on the front page of this decision. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the amendment on January 13, 2019, the fifth day after its registered mailing.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

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

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on June 1, 2018 on a month-to-month basis. Rent in the amount of \$750.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$375.00 at the start of the tenancy, which the landlord still retains in trust.

The landlord testified that because the tenant failed to pay September and October 2018 rent, the landlord received an order of possession effective September 30, 2018 through a direct request proceeding. The landlord applied for a writ of possession and the bailiffs executed this writ October 23, 2018. The landlord testified that he could not rent the unit for November 2018.

In the landlord's application, the landlord seeks compensation in the amount of \$6,003.45, including the following;

Item	Amount
Unpaid Rent & Loss of Rent	\$2,250.00
Application for Writ of Possession	\$80.00
Execution of Writ of Possession	\$3,492.97
Dumping Fees	\$5.00
New Lock	\$137.74
Registered Mail	\$12.55
Registered Mail	\$11.34
Photocopy	\$4.48

Photocopy	\$4.37
Total Claim	\$5,998.45

Upon review of the landlord's claim, I note the above does not equate to \$6,003.45, but rather totals \$5,998.45. In accordance with section 64(3) of the *Act*, I amend the landlord's application to reflect the amount claimed to \$5,998.45.

### Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

### Unpaid Rent & Loss of Rent

Section 26 of the *Act* establishes that a tenant is obligated to pay rent on the date indicated in the tenancy agreement. 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 \$750.00. Based on the landlord's undisputed testimony that rent remains unpaid for September and October 2018, I find the landlord is entitled to \$1,500.00 in rent. In relation to the landlord's claim for loss of November rent, I find it probable that the landlord could not rent the unit effective November 1, 2018 with the writ having only been executed on October 23, 2018. Therefore, I find that the landlord is entitled to \$750.00 for loss of November 2018 rent.

### Application & Execution of Writ of Possession

In regards to the landlord's request to recover the writ of possession and bailiff fee, I hold the tenant responsible for this cost. The landlord was entitled to apply for a writ of possession and have it executed because the tenant had not complied with the order of

possession. Accordingly, I find the landlord is entitled to recover \$3,572.97 (\$80.00 +\$3,492.97).

### Dumping Fees

Section 37 of the *Act*, establishes that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Upon review of the invoice and undisputed testimony of the landlord I am satisfied that the tenant left the rental unit contrary to section 37(2) of the *Act*. Accordingly, I find the landlord is entitled to recover damages in a dumping fee, in the amount of \$5.00.

### New Lock

During the hearing the landlord did not present this portion of his claim. Although the landlord's documentary evidence includes a receipt for a lock, the invoice from the bailiffs indicate the tenant was personally served at the unit and provided peaceful possession to the landlord. As such I find the landlord failed to establish a new lock was required. Accordingly I dismiss this portion of the landlord's claim, without leave to reapply.

### Registered Mail & Photocopy

The *Act* does not specifically permit authority to grant compensation for the cost of serving or preparing documents for a dispute resolution hearing. The *Act* gives authority to recover the cost of the filing fee. The landlord's request for registered mail and photocopy expenses are not compensable under the *Act*. For this reason, I dismiss this portion of the landlord's claim.

### Security Deposit and Filing Fee

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee for a total award of \$5,927.97. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$375.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$5,552.97.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$5,552.97 for the following items:

<b>Item</b>	<b>Amount</b>
Unpaid Rent & Loss of Rent	\$2,250.00
Application for Writ of Possession	\$80.00
Execution of Writ of Possession	\$3,492.97
Dumping Fees	\$5.00
Filing Fee	\$100.00
Less Security Deposit	(\$375.00)
<b>Total Claim</b>	<b>\$5,552.97</b>

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: January 28, 2019

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Residential Tenancy Branch