



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, FFL

### Introduction

On September 21, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for Unpaid Rent pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlords attended the hearing; however, the Tenant did not make an appearance. All in attendance provided a solemn affirmation.

The Landlords advised that they served the Tenant with the Notice of Hearing package and evidence by registered mail on September 22, 2018 to the address that the Tenant wrote down on the move-out inspection report (the registered mail tracking number is listed on the first page of this decision). Based on the undisputed, solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received this package five days after it was mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for the unpaid rent?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?

### Background and Evidence

The Landlords advised that the tenancy started on May 1, 2018 and ended when the Tenant gave up vacant possession of the rental unit on September 18, 2018. Rent was established at \$2,350.00 per month, due on the first of each month. A security deposit of \$1,175.00 was paid.

The Landlords advised that the Tenant paid September 2018 rent via a cheque but subsequently stopped the payment. They advised that the Tenant vacated the rental unit and a move-out inspection report was conducted with the Tenant on September 18, 2018. They solemnly affirmed that the Tenant wrote a forwarding address on the move out inspection report and this was the address that they used for service of the Notice of Hearing package.

In total, the Landlords are seeking compensation in the amount of **\$2,350.00** for September 2018 rent, and would like to apply the security deposit towards this debt.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, a forwarding address in writing was provided by the Tenant on September 18, 2018. Furthermore, the undisputed evidence before me is that the Landlords did make an Application to keep the security deposit within 15 days of September 18, 2018. As such, I am satisfied that the Landlords complied with the *Act*, and the doubling provisions do not apply in this instance.

With respect to the Landlord's claims for compensation for unpaid rent, I am satisfied from the undisputed evidence that Landlords are entitled to a monetary award. As such, I grant the Landlord a Monetary Order in the amount of **\$2,350.00**, which is comprised of rent owed for the month of September 2018.

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain the security deposit in partial satisfaction of the debt outstanding.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlords**

Item	Amount
September 2018 – Outstanding rent	\$2,350.00
Filing fee	\$100.00
Less security deposit	-\$1,175.00
<b>Total Monetary Award</b>	<b>\$1,275.00</b>

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$1,275.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 7, 2019

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Residential Tenancy Branch