



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, MNDCL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 23 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 he sent two separate copies of his application for dispute resolution hearing package to the two tenants on December 27, 2018, by way of registered mail to the rental unit address where he said that the tenants were living until January 2, 2019. The landlord provided two Canada Post receipts and tracking numbers with this application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on January 1, 2019, five days after the registered mailings.

### Issues to be Decided

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

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on July 1, 2018. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid by the tenants and the landlord was ordered to retain both deposits in a previous RTB decision that I made on December 3, 2018, after a hearing with both parties' applications on November 30, 2018 ("previous hearing" and "previous decision"). The file numbers for that hearing appears on the front page of this decision. The tenants vacated the rental unit on January 2, 2019 after they were removed by a bailiff.

The landlord said that he was seeking pro-rated rent of \$1,632.25 from the tenants for the period from December 1 to 22, 2018, as per the parties' previous agreement for the tenants to vacate by December 22, 2018. This was noted in my previous decision.

The landlord also seeks \$32.30 for registered mail costs for this hearing, \$25.00 USB costs for this hearing, \$200.00 because the bailiff changed the locks to remove the tenants, \$100.00 for locksmith costs, \$200.00 for fuel for 10 trips between the landlord's residence and the rental unit because the tenants did not move as agreed. The landlord did not provide any receipts for the above costs, stating that he had them but he did not provide them.

### Analysis

Section 26 of the *Act* requires tenants to pay rent when it is due under a tenancy agreement.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In my previous decision, I ordered the tenants to pay the landlord pro-rated rent of \$1,632.25 for the period from December 1 to 22, 2018. Since December 2018 rent was

not yet due at the time of the previous hearing on November 30, 2018, I did not issue a monetary order to the landlord for that amount. In my previous decision, I provided the landlord with leave to reapply to obtain the above rent amount if it was unpaid after the previous hearing. I award the landlord \$1,632.25 for unpaid rent from December 1 to 22, 2018, as the tenants were residing in this rental unit during this time and they failed to pay this rent as ordered by me at the previous hearing.

Pursuant to 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 landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for registered mail costs of \$32.30 and USB costs of \$25.00. The only hearing-related costs recoverable under section 72 of the *Act*, are for the filing fee.

I dismiss the remainder of the landlord's application for changing the locks of \$200.00, locksmith fees of \$100.00 and fuel trips of \$200.00. The landlord did not provide receipts for these costs, despite having ample time to do so, from the time he filed this application on December 23, 2018, and this hearing date on April 16, 2019, which is almost four months.

As the landlord was partially successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenants.

### Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$1,732.25. Should the tenants 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: April 25, 2019

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Residential Tenancy Branch