



# 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 landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that the tenant was personally served with their application for dispute resolution in February of 2019, though they could not specifically recall on what date. I find that the tenant was served with the landlords' application for dispute resolution in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?

2. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

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

The landlords provided the following undisputed testimony. This tenancy began on November 1, 2018 and ended on February 27, 2018. This was originally a fixed term tenancy agreement set to end on October 31, 2019. Monthly rent in the amount of \$2,600.00 was payable on the first day of each month. A security deposit of \$1,300.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified to the following facts. The landlords were awarded an Order of Possession in a Residential Tenancy Decision dated February 13, 2019. The tenant was personally served with the Order of Possession on the same day the landlords received the February 13, 2019 decision, though they could not recall what date that was. The landlords provided the file number for the previous arbitration.

The tenant filed an application for review consideration on February 15, 2019 which was dismissed on February 22, 2019 and the February 13, 2019 Order was upheld. The landlords testified that after the tenant received the review consideration decision he refused to move out and they were forced to hire a bailiff to remove the tenant. The landlords testified that the bailiff removed the tenant on February 27, 2019 which cost the landlords \$2,000.00. A receipt showing same was entered into evidence. The landlords testified that they also had to pay a court registry filing fee in the amount of \$120.00 in order to get the Writ of Possession required by the bailiff. A receipt showing same was entered into evidence. The landlords are seeking the cost of the bailiff and court registry fee from the tenant.

The landlords testified that they started looking for a new tenant as soon as the tenant was removed from the subject rental property but were unable to find one for March 1, 2019, which was two days after the tenant was removed by the bailiffs.

The landlords testified that the tenant only paid \$300.00 towards January 2019's rent and did not pay February 2019's rent in the amount of \$2,600.00. The landlords are seeking a total of \$7,500.00 for lost rent from the tenant from January 2019 to March 2019.

### Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,600.00 on the first day of each month from January to February 2019 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlords \$4,900.00 in unpaid rent.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

In this case, the tenant caused the one-year fixed term tenancy to end early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement. Pursuant to section 7, the tenant is required to compensate the landlords for that loss of rental income. I find that the tenant's refusal to vacate the subject rental property in accordance with the February 13, 2019 Order after his application for review consideration was dismissed prevented the landlords from finding new tenants for March 1, 2019 and so the tenant is responsible for March 2019's rent in the amount of \$2,600.00. I find that the landlords mitigated their damages by looking for a new tenant immediately after the tenant was removed by bailiff.

I also find that the tenant's refusal to comply with the February 13, 2019 Order after his application for review consideration was dismissed resulted in the landlords incurring the cost of court registry and bailiff fees totaling \$2,120.00. I find that the landlords are entitled to recover these costs from the tenant.

As the landlords were successful in their application I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlords are entitled to retain the tenant's entire security deposit in the amount of \$1,300.00 in part satisfaction of their monetary claim against the tenant.

### Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
January 2019 and February 2019 rent	\$4,900.00
March 2019 rent	\$2,600.00
Bailiff fees	\$2,000.00
Court registry fees	\$120.00

Filing fee	\$100.00
Less security deposit	-\$1,300.00
<b>TOTAL</b>	<b>\$8,420.00</b>

The landlords are provided with this Order 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: June 06, 2019

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Residential Tenancy Branch