



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING  
CORPORATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, OPR, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for monetary compensation, for compensation for unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Three agents for the Landlord (the “Landlord”) were present for the hearing. Initially no one was in attendance for the Tenants, however one of the Tenants called in approximately 8 minutes into the hearing.

The parties were affirmed to be truthful in their testimony. The Landlord stated that the Tenants were served with the Notice of Dispute Resolution Proceeding package and a copy of their evidence by registered mail sent on September 9, 2019. The Landlord submitted registered mail information for both packages and the tracking numbers are included on the front page of this decision. The tracking information submitted by the Landlord shows that both packages were unclaimed and returned to the sender. Despite not claiming the mail, I find that both Tenants were served in accordance with Section 89 of the *Act* and are deemed served 5 days after the packages were sent.

The Landlord also submitted email correspondence with the Tenants which shows that the information was also sent to the Tenants by email at their request. The Tenant confirmed that he received copies of the documents by email. The Tenants did not submit any evidence prior to the hearing.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

At the hearing the Landlord confirmed that the tenancy had ended as the Tenants had moved out. As such, they stated that they are no longer seeking an Order of Possession and would like to proceed with the monetary claims only. Therefore, I amend the Application for Dispute Resolution to remove the claim for an Order of Possession.

The Landlord filed the application seeking compensation for unpaid rent for July and August 2019. However, at the hearing they requested to add a claim for September 2019 rent as well. As I find that the Tenants would reasonably expect that they would owe rent on the first of each month as per the tenancy agreement and as required by Section 26 of the *Act*, I do not find that it would unfairly prejudice the Tenants to amend the application to add a claim for an additional month of rent.

These amendments were made pursuant to Section 64(3)(c) of the *Act*.

### Issues to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to compensation for unpaid rent?

Should the Landlord be provided authorization to retain the security deposit towards compensation found to be owing?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord provided testimony on the tenancy which was confirmed by the tenancy agreement that was included as evidence. The tenancy began on November 1, 2018. Rent in the amount of \$1,838.00 was due on the first day of each month. The Tenants were also to pay a monthly parking fee of \$60.00. The Tenants paid a security deposit of \$949.00 of which the Landlord still holds. Although the tenancy agreement notes a

pet damage deposit of \$200.00, the Landlord stated that they don't believe that the Tenants had pets and that they did not receive a pet damage deposit payment.

The Landlord testified that they were unaware that the Tenants had moved out until they found the unit abandoned on September 14, 2019. They stated that the keys were not returned, and they had not received any notification that the Tenants would be moving out.

The Tenant testified that they moved out on August 9, 2019 and stated that he thought they had notified the Landlord verbally. He stated that they forgot to return the keys.

The Landlord stated that they served the Tenants with a 10 Day Notice on August 14, 2019 by posting the notice on the Tenants' door. A copy of the 10 Day Notice was submitted into evidence and states that \$3,676.00 was unpaid as due on August 1, 2019. The Landlord stated that they received cheques for July and August 2019 rent which were returned from the bank as non-sufficient funds (NSF). They stated that they have not received any amount of money towards rent for July and August 2019.

The Tenant agreed that they did not pay rent for July and August 2019 and therefore agreed that an amount of \$3,676.00 is owed to the Landlord. The Tenant stated his understanding that the Landlord would be retaining the security deposit towards compensation the outstanding rent.

The Landlord testified that no amount of rent was received for September 2019 either and therefore they are seeking an additional \$1,838.00 in compensation for rent.

The Tenant disputed that any amount was due for September 2019 due to moving out in August 2019.

The Landlord is also seeking \$120.00 compensation which includes a \$60.00 parking fee for August 2019, a \$20.00 NSF fee for the August 2019 parking payment, a \$20.00 NSF fee for July 2019 rent and a \$20.00 NSF fee for August 2019 rent. The Tenant agreed that an amount of \$120.00 was owed for these fees as claimed by the Landlord.

### Analysis

As stated in Section 26 of the *Act*, a tenant must pay rent when due as per the tenancy agreement. I accept the testimony of the Landlord that rent in the amount of \$1,838.00 was due on the first day of each month and find this to be confirmed by the tenancy agreement submitted into evidence.

As the Tenant agreed that rent for July and August 2019 was not paid, I find that the Tenants owe the Landlord \$3,676.00 in rent for these two months.

Regarding September 2019 rent, the parties were not in agreement as to whether the Tenants had moved out by September 1, 2019. While the Tenant testified that they moved out on August 9, 2019, the Landlord stated that they became aware that the Tenants had moved out on September 14, 2019. As the 10 Day Notice was served to the Tenants on August 14, 2019, I find it unlikely that the Landlord was aware that the Tenants may have vacated prior to this.

I also note that as stated in Section 45 of the *Act*, a tenant must provide at least one month written notice to end the tenancy. The Tenant stated that verbal notice may have been provided, although seemed unsure as to whether it had been. As such, if the Tenants did not move out due to receiving a 10 Day Notice, did not provide one month written notice, and did not return the keys, I find the testimony of the Landlord's to be likely in that they may not have been aware that the Tenants had moved out until September 14, 2019. I also find it unlikely that the Landlord would have been able to have new tenants in the rental unit for September 2019 and therefore experienced a loss of rental income for this month.

Accordingly, I find that the Tenants owed rent as due on September 1, 2019 in the amount of \$1,838.00 and therefore I award this amount to the Landlord.

As the Tenant agreed that they also owed \$120.00 in parking fees and NSF fees to the Landlord, I also award this amount. As the Landlords were successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00.

The Landlord may retain the security deposit towards the amount owing and is therefore issued a Monetary Order in the amount outlined below:

July 2019 rent	\$1,838.00
August 2019 rent	\$1,838.00
September 2019 rent	\$1,838.00

Parking fee	\$60.00
NSF fees	\$60.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$949.00)</i>
<b>Total owing to Landlord</b>	<b>\$4,785.00</b>

During the hearing the Tenant confirmed that he does not have a forwarding address to provide to the Landlord and requested service by email. As such, pursuant to Section 71 of the *Act*, the Landlord may serve the Monetary Order to Tenant J.F. by email.

### Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$4,785.00** as outlined above. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. 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: October 31, 2019

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Residential Tenancy Branch