



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL -S; FFL

### Introduction

This hearing dealt with the landlord's monetary claim for unpaid and/or loss of rent and unpaid utilities. The landlord was represented by his daughter at the hearing; however, there was no appearance on part of the tenant.

The landlord's daughter testified that the tenant was served with the hearing documents in person on August 24, 2019 in the alley behind the residential property. Also, the landlord's evidence was served upon the tenant in person on September 16, 2019 when the tenant returned to the residential property to retrieve an item of clothing she had left behind.

I accepted that the tenant was duly served with notification of this proceeding as submitted to me by the landlord's representative and I continued to hear the landlord's case in the absence of the tenant.

I heard that the landlord determined the unit was abandoned on August 26, 2019 but that the landlord left the tenant's possessions in the rental unit until September 15, 2019. The landlord's representative requested the monetary claim be increased to include loss of rent and utilities up to September 15, 2019. The landlord did not submit or serve an Amendment but claimed that an updated utility calculation was served upon the tenant on September 16, 2019. I did not permit the amendment because the tenant had not been put on notice that the landlord would be seeking to increase the claim during this proceeding or that such an amendment would have been reasonably foreseeable in the circumstances. Therefore, in keeping with principles of natural justice, I declined to amend this application; however, I informed the landlord's representative that the landlord may make another Application for Dispute Resolution if additional losses have been incurred.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for unpaid and/or loss of rent and unpaid utilities in the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord's representative submitted the following facts with respect to the tenancy agreement:

- a written tenancy agreement was executed but the landlord cannot locate it;
- tenancy started on or about March 1, 2019;
- the tenant paid a security deposit of \$750.00;
- the monthly rent was set at \$1,500.00 payable on the first day of every month; and,
- the tenant was required to pay 40% of the hydro and gas bills received for the residential property.

The landlord submitted that the tenant did not pay rent for July 2019 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on July 10, 2019, which the tenant disputed. At the hearing that took place on September 9, 2019 the Arbitrator recorded the landlord's submission that the tenant had abandoned the rental unit and determined the tenant failed to pay rent for July 2019 in the amount of \$1,500.00.

In the matter before me, the landlord's representative submitted that in addition to not paying rent for July 2019, the tenant did not pay rent for August 2019 and on August 8, 2019 a written demand for utilities was provided to the tenant in the amount of \$742.37 along with copies of the utility bills.

On August 15, 2019 the landlord made this application seeking to recover unpaid rent of \$3,000.00 for the months of July 2019 and August 2019 and \$735.37 in unpaid utilities.

The landlord's representative testified that on August 23, 2019 a Notice of Inspection was given to the tenant and that on August 26, 2019 the landlord entered the unit and determined the tenant had abandoned the property.

Documentary evidence provided by the landlord included a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and written demand for utilities dated August 8, 2019 and the utility bills.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold or otherwise not pay the rent due to the landlord.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1,500.00 every month and that she failed to do so for the month of July 2019. I was not provided any evidence to suggest the tenant had the legal right to withhold rent payable to the landlord. Therefore, I find the landlord entitled to recover unpaid rent of \$1,500.00 from the tenant for the month of July 2019.

Considering the tenant disputed the 10 Day Notice and remained in possession of the unit through August 2019, I find the tenant's actions resulted in a further loss of rent for the landlord for the month of August 2019 in the amount of \$1,500.00. Therefore, I award the landlord loss of rent for the month of August 2019.

Also, based on the unopposed evidence before me, I am satisfied the tenant was obligated to pay for utilities for the rental unit under the terms of tenancy and that there was an agreement for her to pay 40% of the utility bills incurred at the property. Upon review of the written demand and the utility bills given to the tenant on August 8, 2019, I grant the landlord's request to recover \$735.37 for utilities, as claimed.

Since the landlord was successful in this application, I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In light of all of the above, I provide the landlord with a Monetary Order in the net amount calculated below to serve and enforce upon the tenant:

Unpaid rent – July 2019	\$1,500.00
Loss of rent – August 2019	1,500.00
Unpaid utilities – as demanded on August 8, 2019	735.37
Filing fee	100.00
Less: security deposit	<u>(750.00)</u>
Monetary Order for landlord	\$3,085.37

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$3,085.37 to serve and enforce upon the tenant.

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 18, 2019

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Residential Tenancy Branch