



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDCL-S MNRL-S

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*,  
and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord stated she sent a copy of her application for dispute resolution and evidentiary package to the tenant by way of Canada Post Registered Mail on October 4, 2019. A copy of the Canada Post tracking number and receipt were provided as part of her hearing package. Pursuant to sections 88, 89 & 90 of the *Act*, the tenant deemed to have been served with these documents on October 9, 2019, five days after their mailing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award? Can the landlord recover the filing fee?

Can the landlord retain the tenant's security deposit?

### Background and Evidence

The landlord testified that this tenancy was for a fixed-term starting July 1, 2019, set to expire on June 30, 2020. Rent was \$1,980.00 per month and a security deposit of \$990.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord testified that in September 2019 she received an Order of Possession following a hearing before the Residential Tenancy Branch. She said this Order was granted following the tenant's unsuccessful application to dispute a 10 Day Notice for Unpaid Rent. The landlord said the tenant vacated the property on September 28, 2019 following the issuance of the Order.

The landlord explained that she attempted to immediately re-rent the suite but was unsuccessful on finding a tenant until December 1, 2019. The landlord sought a monetary award representing unpaid rent of July, August, September & October 2019. The landlord said she did not seek any monetary award following the issuance of the 10 Day Notice for Unpaid Rent which prompted the Order of Possession.

In addition to recovering the unpaid rent, the landlord applied for a monetary award related to; the replacement of the suite key/unit re-locking which she said was necessary following the tenant's failure to return the keys, to cover strata fines collected during the tenancy and for costs associated with re-renting the suite, as per the liquidated damages clause. The landlord has also applied to retain the tenant's security deposit.

### Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In this case, no written notice was provided to the landlord, rather the tenancy ended by way of Order of Possession issue against the tenant following the issuance of a 10 Day Notice to End Tenancy for unpaid rent. The tenant vacated the property on September 28, 2019. The landlord said she was looking to recover rent which was unpaid in July, August and September 2019. Additionally, she sought to recover rent for October 2019 because she was unable to re-rent the suite following the tenant's departure at the end of September 2019. I find that the landlord is entitled to all unpaid rent related to the unit and that the landlord made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect*. The landlord is therefore entitled to the entire amount sought in her application for a Monetary Order related to unpaid rent.

In addition to the unpaid rent the landlord sought a monetary award related to strata fines incurred during the course of the tenancy, for the lock replacement/rekeying and for the costs associated with re-renting the suite through her liquidated damages clause. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party, while Policy Guidelines 4 & 16 provides information related to the four-point test to determine whether an award is warranted and regarding the issuance of liquidated damages. I find the landlord has presented sufficient evidence and testimony to adequately demonstrate that the money owed for strata fines and for the lock replacement/rekeying were justified. Additionally, I find the amount sought in the liquidated damages claim does not amount to a penalty as described in the Policy Guideline. For these reasons, I award the landlord the entire amount sought for these items.

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. I find that the tenancy ended on September 30, 2019 and the landlord apply to retain the tenant's security deposit on September 26, 2019, thereby satisfying the requirements of section 38.

As the landlord was successful in her application she may recover the \$100.00 fee from the tenant.

Conclusion

I issue a Monetary Order in the landlords' favour in the amount of \$8,086.20 against the tenant based on the following monetary awards:

ITEM	AMOUNT
Unpaid Rent for July 2019	\$1,980.00
Unpaid Rent for August 2019	1,980.00
Unpaid Rent for September 2019	1,980.00
Unpaid Rent for October 2019	1,980.00
Lock Re-keying	256.20
Strata Fine	200.00
Liquidated Damages	600.00
Return of Filing Fee	100.00
Less Security Deposit	(-\$990.00)
<b>TOTAL =</b>	<b>\$8,086.20</b>

The landlord is provided with a Monetary 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: January 27, 2020

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Residential Tenancy Branch