



# 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:

Authorization to recover the filing fees from the tenant pursuant to section 72;

A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and

A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. to enable the tenant to call into this hearing scheduled for 1:30 p.m.

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. 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 landlord and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

The landlord testified that on September 16, 2019, he served the tenant with the Application for Dispute Resolution Proceedings Package and a substitutional service order by email in accordance with the substitutional service order granted on September 11, 2019. The email was sent to the email address provided on the cover page of the substitutional service order. The landlord testified he received an email response from the tenant on September 16, 2019 advising she does not have the ability to pay any money to the landlord. Given the undisputed testimony of the landlord, I am satisfied

the tenant was sufficiently served with the Application for Dispute Resolution Proceedings Package in accordance with section 71 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to compensation from the tenant? Can the landlord recover the filing fee?

Background and Evidence

The landlord provided the following undisputed testimony. The tenant moved in approximately May of 2015. A condition inspection report was conducted with the tenant at the time, however the landlord did not provide a copy as evidence in this proceeding. Provided as evidence was a tenancy agreement signed on January 1, 2019 indicating rent in the amount of \$3,100.00, due on the first day of each month. According to this tenancy agreement, a security deposit of \$3,100.00 was collected by the landlord.

The tenancy ended when the landlord obtained an Order of Possession on April 2, 2019 for unpaid rent. The landlord obtained a Writ of Possession from the Supreme Court on April 11, 2019 and the bailiff executed the Writ on April 22, 2019.

The landlord testified that the bailiff advised him not to attend the rental unit while they were executing the Writ. He was advised to attend at the rental unit after the bailiff had finished their execution to sign paperwork. The landlord did not have the opportunity to serve the tenant with any notices to conduct a condition inspection report with him as the tenant wouldn't communicate with him.

The landlord further testified that due to the abundance of possessions in the rental unit, they required a second deposit to remove the tenant's goods. When the tenant advised the bailiff that anything left behind could be disposed of, the bailiff reduced his fees as they wouldn't be required to move the tenant's goods out and store them. The bailiff charged the landlord \$6,190.57 for their services which was paid for from the deposit paid to them by the landlord upon retaining them. The bailiff's receipt was provided as evidence.

After the bailiffs left, the landlord testified that he had to dispose of the tenant's left-behind possessions. He hired a moving truck at a cost of \$98.94 and made several trips to the city dump, costing a total of \$101.00.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 21 of the Residential Tenancy Regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. A condition inspection report provides the parties and the arbitrator with an idea of the state of the rental unit at the commencement and end of the tenancy and allows the parties and the arbitrator to determine the difference between the two.

The landlord did not provide a condition inspection report as evidence of the state of repair and condition at the commencement of the tenancy. Nor was he able to provide a condition inspection report done at the end of the tenancy due to the tenancy ending by the execution of a Writ of Possession. The landlord testified he does not have a forwarding address for the tenant to this day, prompting him to require a substitutional service order.

Without a condition inspection report done at the commencement and the end of the tenancy, I am unable to determine what damages were sustained to the rental unit by the tenant during the tenancy. Further, no photographs were provided as evidence by the landlord to corroborate his claim for damages to the rental unit. As such, I find the

landlord has not provided satisfactory proof of damages, and I decline to award him compensation for damages sustained to the rental unit.

The landlord has provided undisputed testimony and supplied receipts to show he paid the bailiff \$6,190.57 to execute the Writ of Possession; the sum of \$101.00 to make trips to the dump to dispose of the tenant's garbage; and \$94.98 to hire a moving van to make those trips. I find those damages resulted from the tenancy and in accordance with section 67 of the *Act*, I award compensation to the landlord for each verified expense.

In his application, the landlord seeks compensation for rent for the month of April 2019. I find the tenancy ended on April 2, 2019 and the tenant remained in the rental unit up until the time the bailiff executed the Writ on April 22, 2019. Section 57(3) of the *Act* states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. I find the tenant overheld the tenancy for a period of 22 days in April and that the landlord is therefore entitled to pro-rated compensation. As the monthly rent was set at \$3,100, the landlord is entitled to:  $[\$3,100.00 / 30 \text{ (days)} \times 22 \text{ (days)} = \$2,273.33]$ . Pursuant to section 57 of the *Act*, I award the landlord **\$2,273.33**.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold a security deposit in the amount of **\$3,100.00**. Pursuant to the offsetting provisions of section 72, I allow the landlord to retain the full security deposit in partial satisfaction of the monetary order.

Item	Amount
Bailiff fees	\$6190.57
Dump fees	\$101.00
Moving truck rental	\$94.98
22 days overholding rent	\$2,273.33
Filing fee	\$100.00
Less security deposit	(\$3,100.00)
<b>Total</b>	<b>\$5,659.88</b>

### Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$5,659.88**. The tenant 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: January 06, 2020

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Residential Tenancy Branch