



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for rent and/or utilities for the landlord pursuant to 67 of the *Act*;
- authorization to recover the filing fee pursuant to section 72 of the *Act*.

The landlord attended the hearing via conference call. The landlord ES was given a full opportunity to be heard, to present sworn testimony, to make submissions. The tenant did not attend this hearing.

The landlord testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on February 21, 2020. I find that this satisfied the service requirements set out in sections 89 and 90 of the *Act*, and find the tenant was deemed served in accordance with the *Act* on February 26, 2020. A copy of the Canada Post Tracking number is listed on the cover page of this decision.

Rule of Procedure 7.3 states:

#### 7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I proceeded with the hearing in the absence of the tenant.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent/or utilities pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord testified regarding the following facts. The fixed term tenancy began on June 1, 2017 and then reverted to a month-to-month tenancy. The monthly rent in the amount of \$1,152.00 was payable on the first day of each month.

The tenant was served with the landlord's 10 Day Notice to End Tenancy for unpaid rent, (the "Notice"), dated October 21, 2019 by registered mail. The Notice indicated an effective move-out date of October 31, 2019. The tenant moved out on November 4, 2019.

The tenant did not attend the hearing to present any submissions in relation to the landlord's claims.

The landlord testified that the tenant did not pay any rent for the months of July, August September and October 2019. The landlord is seeking unpaid rent for the above months in the amount of \$4,608.00 plus an additional overholding fee of \$152.00 as the tenant did not vacate the rental unit until November 4, 2019.

The landlord testified that the tenant resided in the rental unit for a number of years but despite an agreed payment plan, the tenant failed to pay the outstanding rent.

### Analysis

The landlord provided undisputed evidence at this hearing as the tenant did not attend.

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*. Pursuant to

section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,152.00 on the first day of each month.

I accept the uncontradicted testimony and evidence of the landlord and find the tenant did not pay rent for the months of July to October 2019. I find the tenant vacated the unit on November 4, 2019 without paying the rent arrears.

Based on the testimony of the landlord and the rent ledger entered into evidence, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$4,608.00 in unpaid rent for the months of July to October 2019.

### Overholding

#### *Residential Tenancy Policy Guideline #3*

States that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to section 44 of the *Act*, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the unit.

This tenancy ended on October 31, 2019 pursuant to a 10 Day Notice for unpaid rent. As the tenant remained in the rental unit up until November 4, 2019, the landlord is entitled to receive \$152.00 overholding fee. (Based on a per diem rate of \$38.00 for 4 days).

Based on the uncontradicted testimony and evidence of the landlord, I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of \$4,760.00 for unpaid rent and the overholding fee.

As the landlord was successful in her application, I award the landlord reimbursement of the \$100.00 filing fee.

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

ITEM	AMOUNT
Rent outstanding July to October (\$1,152.00 monthly x 4)	\$ 4,608.00
Overholding fee	\$152.00
Reimbursement of the filing fee	\$100.00
<b>Total Monetary Award</b>	<b>\$4,860.00</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible.

#### Conclusion

I grant a monetary order to the landlord in the amount of **\$4,860.00**

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 30, 2020

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Residential Tenancy Branch