



# 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      MNRL-S, FFL

### Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 21 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the landlord company named in this application at this hearing. The male landlord's agent attended this hearing but did not testify.

The landlord testified that the tenants were each separately served with the landlord's application for dispute resolution and notice of hearing on November 8, 2019, both by way of registered mail to the forwarding address provided by the tenants in the security deposit return form provided on October 17, 2019, upon move-out from the rental unit. The landlord provided two Canada Post receipts and confirmed both tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application and notice of hearing on November 13, 2019, five days after their registered mailings.

The landlord stated that the tenants were each served with the landlord's written evidence package on February 20, 2020, both by way of registered mail to the forwarding address provided by the tenants in the security deposit return form provided on October 17, 2019. The landlord provided two Canada Post receipts and confirmed both tracking numbers verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's written

evidence package on February 25, 2020, five days after their registered mailings. I notified the landlord that I could not consider the evidence at the hearing or in my decision, as it was deemed received late, less than 14 days prior to this hearing date, contrary to Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

### Background and Evidence

The landlord testified regarding the following facts. This tenancy began on November 1, 2018 and ended on October 17, 2019. Monthly rent in the amount of \$1,708.00 was payable on the first day of each month. A security deposit of \$854.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of \$1,708.00 for unpaid rent and the \$100.00 filing fee paid for this application. The landlord claimed that the tenants failed to pay rent of \$1,708.00 for October 2019. The landlord maintained that the tenants provided notice on September 30, 2019, to move out of the rental unit by October 31, 2019. She said that both parties had email correspondence about the tenants' failure to pay the October 2019 rent but the tenants never paid, despite deadlines and requests made by the landlord. She confirmed that the landlord advertised the rental unit for re-rental, had multiple showings and applications for it, and re-rented it as of December 23, 2019. She stated that the landlord was seeking the entire month of rent for October 2019, for the above reasons, despite the fact that the tenants vacated on October 17, 2019, prior to the end of the month.

### Analysis

As per section 26 of the *Act*, the tenants are required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,708.00 for October 2019. Therefore, I find that the landlord is entitled to \$1,708.00 in rental arrears from the tenants. I find that rent is due on the first day of each month, as per the parties' tenancy agreement, and the tenants failed to pay it on October 1, 2019. I accept that the tenants provided one month's notice to the landlord on September 30, 2019, to move out by October 31, 2019, but they chose to move out earlier on October 17, 2019.

I accept the landlord's testimony that the landlord had to clean the rental unit and prepare it for re-rental after the tenants vacated. I find that the landlord reasonably mitigated its losses by attempting to re-rent the unit as soon as possible by having advertisements, showings and applications for the unit. The landlord was unable to re-rent the unit until December 23, 2019.

The landlord continues to hold the tenants' security deposit of \$854.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' entire security deposit of \$854.00 in partial satisfaction of the monetary award. No interest is payable on the deposit over the period of this tenancy.

As the landlord was successful in this application, I find that it is entitled to recover the \$100.00 application filing fee from the tenants.

### Conclusion

I order the landlord to retain the tenants' entire security deposit of \$854.00.

I issue a monetary order in the landlord's favour in the amount of \$954.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: March 10, 2020

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Residential Tenancy Branch