



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDL-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 and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 33 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 was the property manager for the landlord company named in this application and that she had permission to speak on its behalf.

The landlord confirmed that the tenant was personally served with the landlord's application for dispute resolution hearing package on January 11, 2020, by a licensed private investigator. The landlord provided a sworn affidavit, dated January 17, 2020, from the private investigator. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's application on January 11, 2020.

The landlord was required to serve the notice of hearing, dated December 6, 2019, within three days of receiving it. I accept the landlord's testimony that the landlord was unable to locate the tenant, despite multiple efforts, until a private investigator could do so, resulting in a delay. I find that there was limited prejudice to the tenant, as the tenant had ample time from receiving the application on January 11, 2020 to this hearing date of May 7, 2020, to prepare for, submit evidence, and attend this hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

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

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and testimony, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on October 12, 2017 and ended June 27, 2019. A security deposit of \$897.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. The landlord did not receive a written forwarding address from the tenant. The landlord did not have written permission from the tenant to keep the security deposit. The landlord filed this application to retain the deposit on December 6, 2019.

The landlord said that the rent was initially \$1,795.00 but it was increased to \$1,839.90 by way of a Notice of Rent Increase, dated November 16, 2018 ("NRI"), effective on March 1, 2020. She claimed that this amount was found to be incorrect as per a previous Residential Tenancy Branch ("RTB") decision issued by an Adjudicator for the landlord's ex-parte direct request application. The file number for that hearing appears on the front page of this decision. She confirmed that the landlord was issued a two-day order of possession and a \$100.00 monetary award. The landlord provided a copy of the decision for this hearing. She stated that the tenant paid the above amount of \$1,839.90 each month in March and April 2020. She confirmed that the correct amount should be \$1,839.87 since the Regulation increase amount for 2020 is 2.5% and the landlord was not permitted to round up in numbers.

The landlord seeks a monetary order of \$5,336.56 plus the \$100.00 application filing fee.

The landlord seeks \$555.45 for junk removal at the rental unit. She said that the tenant left items behind that the landlord had to dispose. She pointed to photographs to show the items left behind and confirmed that the invoice provided had been paid by the landlord.

The landlord seeks \$189.00 to paint the rental unit. She pointed to an invoice that she said was paid by the landlord. She stated that there was one photograph to show a broken towel bar in the wall, that had to be painted. She claimed that there were no photographs of other damages that had to be painted, including walls, trims, holes and chips, as stated on the invoice. She explained that the landlord company used the same painter each time, who provided an invoice that was computerized but not on official company letterhead.

The landlord seeks \$191.23 to pay a locksmith to rekey and replace keys at the rental unit. She said that the landlord had to purchase new keys and replace a mailbox lock because the tenant did not return the keys when he vacated. She pointed to a photograph of the inside of the padlock to show that a piece had been removed. The landlord provided an invoice for same and confirmed that it had been paid.

The landlord seeks \$111.14 to replace a parking garage remote, a building FOB, and a parking decal. She claimed that the tenant did not return the above items. She pointed to an invoice and confirmed that it had been paid. She said that the landlord company issued its own invoice because it buys these items in bulk internally.

The landlord seeks \$200.00 for cleaning at the rental unit. She pointed to an invoice for \$210.00 which she said had been paid by the landlord. She explained that the landlord did not claim for the \$10.00 in GST in their original monetary order worksheet, so she would not do so at this hearing. She pointed to photographs of the condition of the rental unit, to show that the landlord had to clean the entire place.

The landlord seeks \$100.00 to recover a filing fee from the previous RTB hearing. She confirmed that the above amount had already been awarded to the landlord through a monetary order but stated that the tenant had failed to pay it.

The landlord seeks \$1,839.87 in rent for each month from May to June 2020, totalling \$3,679.74, reduced by \$0.06 cents to \$3,679.68. The landlord deducted \$0.03 of rent for each month, totalling \$0.06, for March and April 2020, which the tenant overpaid by providing \$1,839.90 instead of \$1,839.87. The landlord said that the tenant failed to pay these amounts while living at the rental unit.

The landlord seeks \$175.00 for each month from May to June 2020, totalling \$350.00 for parking at the rental unit. She explained that this is included in the tenancy agreement, the amounts were unpaid, and parking was added by the tenant on April 17, 2019.

The landlord seeks \$30.00 for each month from May to June 2020, totalling \$60.00 for storage at the rental unit. She explained that this is included in the tenancy agreement and the tenant failed to pay the above amounts.

### Analysis

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that rent of \$1,839.87 was due each month, effective on March 1, 2020. In 2020, the *Regulation* amount for rent increase was 2.5%. The landlord is not permitted to round up the number. The tenant had been overpaying rent of \$1,839.90 in March and April 2020, based on the landlord's NRI. I find that the landlord is entitled to \$1,839.87 instead of the original amount of \$1,795.00 because the tenant paid the higher amounts in March and April 2020.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,839.87 each month in May and June 2020, totalling \$3,679.74. I have deducted the overpayment of \$0.06 in rent for March and April 2020, resulting in \$3,679.68 owed by the tenant.

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$555.45 for junk removal at the rental unit. The landlord provided an invoice for the above amount and confirmed that it had been paid. The landlord provided photographs to show the items that left behind by the tenant and removed by the landlord.

I dismiss the landlord's claim for \$189.00 to paint the rental unit, without leave to reapply. Although the landlord provided a photograph of the broken towel bar inside the rental unit, no other photographs were provided for the repainting of the unit. The landlord claimed that there were walls, trims, holes and chips that were repaired and repainted, yet no photographs of these items were provided by the landlord.

I award the landlord \$191.23 to rekey and obtain new keys for the rental unit. The landlord provided an invoice for the above amount and confirmed that it had been paid. The landlord provided undisputed evidence that the tenant did not return the keys for the rental unit or the mailbox. The landlord provided a photograph of the piece that was removed inside the padlock.

I award the landlord \$111.14 to replace the building FOB, the parking garage remote, and the parking decal. The landlord provided an invoice for the above amount and confirmed that it had been paid. I accept the landlord's evidence that the landlord company issued the invoice because it purchases the above items in bulk. The landlord provided undisputed evidence that the tenant did not return the above items to the landlord.

I award the landlord \$200.00 to clean the rental unit. The landlord provided photographs of the condition of the rental unit that required cleaning. The landlord provided an invoice for \$210.00 and confirmed it was paid. The landlord was only seeking \$200.00 of the \$210.00 invoice at the hearing.

I dismiss the landlord's claim to recover the \$100.00 filing fee paid for a previous RTB application, without leave to reapply. The landlord confirmed that she obtained a monetary order at the previous RTB hearing, but the tenant had not yet paid the landlord. This issue is *res judicata*, as it has already been decided at a previous RTB hearing, so the landlord cannot claim for the same issue twice. I notified the landlord that she was at liberty to enforce the previous monetary order against the tenant.

I award the landlord \$175.00 each month for May and June 2020, totalling \$350.00, for parking fees. The landlord provided for this amount in the tenancy agreement. The landlord confirmed that the tenant failed to pay these amounts while living at the rental unit.

I award the landlord \$30.00 each month for May and June 2020, totalling \$60.00, for storage fees. The landlord provided for this amount in the tenancy agreement. The landlord confirmed that the tenant failed to pay these amounts while living at the rental unit.

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

The landlord continues to hold the tenant's security deposit. Over the period of this tenancy no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$897.50 in partial satisfaction of the monetary award. I issue a monetary order to the landlord for the balance owing of \$4,350.06.

### Conclusion

I order the landlord to retain the tenant's entire security deposit of \$897.50, in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$4,350.06 against the tenant. 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: May 07, 2020