



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNRL, OPR, OPC, FFL, MNDL-S

### **Introduction**

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

- an order of possession for non-payment of rent pursuant to section 55;
- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$13,666.27 pursuant to section 67;
- a monetary order for damage to the rental unit in the amount of \$3,000.00 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:59 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord and two of his agents attended the hearing ("**DH**" and "**TH**") attended the hearing. All were 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, DH, TH, and I were the only ones who had called into this teleconference.

DH testified that she served the tenants with the notice of dispute resolution form, the amendment to the application for dispute resolution, and the landlord's evidence package (the "**Application Materials**") by email on April 1, 2020. DH testified that she sent it to an email address of tenant KS to which the landlord has routinely corresponded with the tenants about the tenancy. Pursuant to the Director's Order made March 30, 2020, service by email is permitted until such the as the declaration of state of emergency made March 18, 2020 is cancelled or expires without being extended. As such, I find that the landlord served the Application Materials on the tenant in accordance with the Act, and the tenants are deemed served with the Application Materials on April 4, 2020, three days after they were emailed, pursuant to the Director's Order.

### **Preliminary Issue – Orders of Possession**

DH testified that the tenants moved out of the rental unit on March 31, 2020. As such, the landlord no longer requires any order of possession. Accordingly, I dismiss the landlord's application for orders of possession for non-payment of rent and for cause, without leave to reapply.

### **Preliminary Issue – Compensation for Damage to Rent Unit**

In the application, the landlord wrote that the compensation sought in compensation for damage to the rental unit were "an estimate only". At the hearing, the DH testified that the landlord now had calculated the amount owing and had prepared and gathered the receipts to support this new amount. However, the landlord did not serve any of these documents on the tenants or provide copies of them to the Residential Tenancy Branch.

As such, I cannot consider the documentary support for the landlord's claim for compensation for damage caused to the rental unit. In light of the fact that this evidence was not in existence when the landlord made his application, I dismiss this portion of the landlord's application, with leave to reapply at a later date.

### **Issues to be Decided**

Is the landlord / Are the landlords entitled to:

- 1) a monetary order of \$13,666.27 for non-payment of rent;
- 2) recover their filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

### **Background and Evidence**

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

The parties entered into a written tenancy agreement starting October 1, 2018. Monthly rent is \$1,550 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$775, which the landlord continues to hold in trust for the tenants.

DH testified that the tenants are \$13,333.27 in rental arrears. The landlord submitted a spreadsheet setting out the particulars of the arrears and rent payments made by the tenants during the course of the tenancy as follows:

<b>Amount Due Date</b>	<b>Amount Due</b>	<b>Amount Paid</b>	<b>Short</b>	<b>Date Paid</b>
Oct.1/18	1,550.00	1,550.00		Oct.9/18
Nov.1/18	1,550.00	1,550.00		Nov.5/18
Dec.1/18	1,550.00	1,550.00		Dec.3/18
<b>Totals 2018</b>	<b>\$4,650.00</b>	<b>4,650.00</b>	0.00	
Jan.1/19	1,550.00	1,550.00		Jan.4/19
Feb.1/19	1,550.00	1,550.00		Feb.1/19
Mar.1/19	1,550.00	1,550.00		Mar.1/19
April 1/19	1,550.00	1,550.00		Apr.1/19
May 1/19	1,550.00	0.00	1,550.00	
June 1/19	1,550.00	983.73		June 4/19
		450.00	116.27	June 7/19
July 1/19	1,550.00	1,500.00	50.00	July 5/19
Aug.1/19	1,550.00	0.00	1,550.00	
Sept.1/19	1,550.00	400.00	1,150.00	Sept.3/19
Oct.1/19	1,550.00	0.00	1,550.00	
Nov.1/19	1,550.00	0.00	1,550.00	
Dec.1/19	1,550.00	50.00	1,500.00	Dec.19/19
<b>Totals 2019</b>	<b>\$18,600.00</b>	<b>9,583.73</b>	<b>9,016.27</b>	
Jan.1/20	1,550.00	0.00	1,550.00	
Feb.1/20	1,550.00	0.00	1,550.00	
Mar.1/20	1,550.00	0.00	1,550.00	
<b>Totals 2020</b>	<b>\$4,650.00</b>	<b>0.00</b>	<b>4,650.00</b>	
<b>All Totals</b>	<b>\$27,900.00</b>	<b>14,233.73</b>	<b>\$13,666.27</b>	
	<b>Total Rent Payable</b>	<b>Total Rent Paid</b>	<b>Total Rent Past Due</b>	

The landlord submitted into evidence bank statements supporting these amounts.

DH testified that the tenants deposited monthly rent directly into the landlord's bank account, and that the landlord did not notice until March 2020 that the tenants had stopped doing so.

### **Analysis**

I find that the tenants were obligated to pay monthly rent in the amount of \$1,550. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy

agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$13,333.27.

Section 7 of the Act states:

**Liability for not complying with this Act or a tenancy agreement**

7(1) 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.

As such, the landlord is entitled to monetary order equal to the amount of the rental arrears.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he/she/they may recover their filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary order made above.

**Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord \$12,658.27, representing the following:

Rental arrears	\$13,333.27
Filing fee	\$100.00
Security deposit deduction	<del>-\$775.00</del>
<b>Total</b>	<b>\$12,658.27</b>

The landlord must serve this decision and attached order on the tenants as soon as possible upon receipt.

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 21, 2020

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Residential Tenancy Branch