



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PREMIER CHOICE INVESTMENTS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFL, MNRL**

### **Introduction**

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

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for rent pursuant to section 67.

Both parties attended the hearing. The landlord was represented by an agent, WM ("landlord"). As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

### **Preliminary Issue**

The tenant advised me that the name depicted on the landlord's Application for Dispute Resolution was incorrect. She advised the correct spelling of her name is shown on the tenancy agreement. I reviewed the landlord's Application for Dispute Resolution and discovered a typographical error was made by the Residential Tenancy Branch when creating this file and corrected this error on the record. The correct party names are reflected on the cover page of this decision.

### **Issue(s) to be Decided**

Is the landlord entitled to:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for rent pursuant to section 67?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord provided the following testimony. The tenancy began on September 21, 2019 with rent set at \$1,600.00 per month. No condition inspection report was conducted with the tenant at the commencement of the tenancy. On September 20<sup>th</sup>, the tenant e-transferred \$1,277 to the landlord. The landlord applied \$477.00 of that money to pro-rated rent from September 20 to September 30<sup>th</sup>. The landlord later corrected his testimony to indicate the money paid for prorated rent from September 21<sup>st</sup> to September 30<sup>th</sup>. The remaining \$800.00 was used for the security deposit. The tenant paid a pet damage deposit of \$400.00 to the landlord on October 4<sup>th</sup>.

On October 4<sup>th</sup>, the tenant also paid \$800.00 towards rent, and a further \$400.00 on October 5<sup>th</sup>, leaving a balance of arrears for October in the amount of \$400.00. Payments of \$400.00 on November 2<sup>nd</sup> and \$400.00 on November 5<sup>th</sup> left a balance of \$1,200.00 owing by the end of November. By the end of December, \$2,800.00 was owing, due to the additional \$1,600.00 December rent not being paid, however a final payment of \$200.00 was made on December 31<sup>st</sup>, reducing it to \$2,600.00. No rent of \$1,600.00 was received for the months of January or February.

The landlord was awarded an Order of Possession by direct request and the tenant was evicted from the rental unit by Writ of Possession on February 15, 2020. The landlord was never given a forwarding address by the tenant.

The tenant provided the following testimony. The tenant does not substantially disagree with the landlord's testimony, however indicated she was advised she could pay the pet damage deposit by installments. Many of the payments made to the landlord were made by the tenant's daughter or her boyfriend. Both of them moved out on November 25<sup>th</sup>, leaving the tenant with no assistance in paying rent. Further, she lost her job in November and was having difficulty in paying rent.

The tenant submits that during the tenancy in the beginning of December, the washer broke, forcing her to do her laundry elsewhere. She was also prevented from accessing

her shower or bath because the washer was in the bathtub. She was never compensated for this.

She attempted to make a payment of \$200.00 towards rent in January however that payment was not accepted by the landlord.

### 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 26(1) of the *Act* states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The tenant did not substantially dispute the landlord's accounting of the arrears in rent unpaid. While the tenant provided many reasons for not paying her rent, she did not provide me with any indication she had any right to deduct all or a portion of her rent. I find the tenant in breach of section 26 of the *Act*.

I accept the landlord's testimony that rent was set at \$1,600.00 per month and that the tenant failed to pay the rent in full each month. I am satisfied that the tenant was in arrears in rent as of December 31, 2020 in the amount of \$2,600.00 and did not pay rent of \$1,600.00 for January and February. The tenant vacated the rental unit on

February 15, 2020. As such, I award the landlord compensation for unpaid rent in the amount of \$5,800.00, representing rent for January and February and arrears in rent accrued prior to January 1, 2020, pursuant to section 67 of the *Act*.

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.

As of the date of this hearing, there is no evidence before me that the tenant has provided her forwarding address to the landlord. As such, the parties are put on notice that both parties must comply with sections 38 and 39 of the *Act* regarding the security deposit and the pet damage deposit.

Item	Amount
Arrears in rent	\$5,800.00
Filing fee	\$100.00
<b>Total</b>	<b>\$5,900.00</b>

#### Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$5,900.00**. 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: June 25, 2020

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Residential Tenancy Branch