



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

On January 15, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Sections 38 and 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlord and the Tenant attended the hearing. All parties provided a solemn affirmation.

The Landlord advised that he served the Tenant with the Notice of Hearing and evidence package by registered mail on January 23, 2020 and the Tenant confirmed that she received this package. The Landlord also advised that he served the Tenant with a USB that contained audio recordings, but he did not check, pursuant to Rule 3.10.5 of the Rules of Procedure, to see if the Tenant could listen to this digital evidence beforehand. The Tenant advised that she did not receive any USB stick in the package she received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and evidence package. As such, the Landlord's documentary evidence will be accepted and considered when rendering this Decision. However, as it is unclear if the USB containing the audio files was served to the Tenant, and as the Landlord did not comply with Rule 3.10.5 regarding the audio evidence, this digital evidence will be excluded and will not be considered when rendering this Decision.

The Tenant advised that she did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2018 and ended when the Tenant gave up vacant possession of the rental unit on January 13, 2020. Rent was established at \$2,193.50 per month and was due on the first day of each month. A security deposit of \$1,070.00 and a pet damage deposit of \$1,070.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that the Tenant provided her forwarding address in writing on the move-out condition inspection report on January 13, 2020.

The Landlord advised that he is seeking compensation in the amount of **\$2,193.50** for the cost of January 2020 rent. He stated that the Tenant did not pay this rent on January 1, 2020, so he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the Tenant's door on January 2, 2020. The Tenant advised him that due to unforeseen circumstances, she was forced to accept a new tenancy commencing February 1, 2020. As a result, she would be vacating the rental unit as per the Notice. As he was unable to re-rent the premises on such short notice, he was also seeking compensation in the amount of **\$2,193.50** for the cost of February 2020 rental loss.

The Tenant advised that she was upset that the Landlord posted the Notice on her door for everyone to see and would have preferred that it was placed in an envelope. She called the Landlord on January 3, 2020 and asked him if she could end her tenancy

effective for February 1, 2020; however, he did not agree to this. She sent the Landlord a message on January 11, 2020 informing him that she would be vacating the rental unit as per the Notice.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing on January 13, 2020. As the tenancy ended on this date as well, I find that January 13, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The undisputed evidence before me is that the Landlord made this Application to claim against the deposits on January 15, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

However, the pet damage deposit can only be claimed against if there is damage due to a pet. As the Landlord did not advise of any damage that was due to a pet, the pet damage deposit should have been returned in full within 15 days of January 13, 2020. As the Landlord did not return the pet damage deposit in full within 15 days of this date, the Landlord in essence illegally withheld the pet damage deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, under these provisions, I grant the Tenant a Monetary Order amounting to double the original pet damage deposit, or **\$2,140.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines

that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Landlord’s claims of compensation in the amount of \$2,193.50 for the cost of January 2020 rent arrears, as the consistent and undisputed evidence is that the Tenant did not pay the rent for this month, I am satisfied that the Landlord has established this claim. As such, I grant the Landlord a monetary award in the amount of **\$2193.50**.

With respect to the Landlord’s claim of \$2,193.50 for the cost of rental loss of February 2020 because he was unable to re-rent the premises on such short notice, I accept that it would have been difficult for the Landlord to have found new tenants to have occupied the rental unit within this small window of time. As a result, I am satisfied that the Landlord has established this claim and I grant the Landlord a monetary award in the amount of **\$2193.50**.

As the Landlord was successful in his Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenant a monetary award as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Doubling of pet damage deposit	-\$2,140.00
<b>TOTAL MONETARY AWARD</b>	<b>-\$2,140.00</b>

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a monetary award as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Rent for January 2020	\$2,193.50
Rent for February 2020	\$2,193.50
Recovery of filing fee	\$100.00

Security deposit	-\$1,070.00
<b>TOTAL MONETARY AWARD</b>	<b>\$3,417.00</b>

Therefore, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Order Payable by the Tenant to the Landlord**

Monetary award payable to the Tenant	-\$2,140.00
Monetary award payable by the Tenant	\$3,417.00
<b>TOTAL MONETARY ORDER</b>	<b>\$1,277.00</b>

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$1,277.00** in the above terms, and 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 9, 2020

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Residential Tenancy Branch