



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on May 2, 2020. The Landlord applied for a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

Two Landlords (the "Landlord") and one of the Tenants (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter – Partial Settlement

During the hearing, both parties came to a settlement regarding the Landlord's application for a monetary order to recover the outstanding rent for April 2020, in the amount of \$190.40.

Section 63 of the *Act* allows for the parties to consider a settlement to their dispute during the hearing, and that any settlement agreement reached during the hearing may be recorded in the form of a decision and an order. In accordance with this, an opportunity for a settlement discussion was presented, and the parties came to an agreement on a settlement that would resolve part of their dispute.

During the hearing, the parties agreed to the following settlement:

1. The parties agreed that the Tenants had paid out of pocket for two repairs to the chimney, during this tenancy, in the amount of \$190.40.
2. The Landlord agreed that they had received copies of the receipts for the completed repair work to the chimney in the rental unit.
3. The Landlord agreed to the deduction of the \$190.40 paid by the Tenants for repairs to the chimney from the April 2020 rent for this tenancy.
4. The Tenants agreed to contact the Landlord, in writing, for all future repairs to the rental unit.

The above terms of the settlement agreement were reviewed with all parties and all parties confirmed that they were entering into the settlement agreement on a voluntary basis.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent for May and June 2020?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

#### Background and Evidence

The parties agreed that this tenancy began on December 1, 2019, as a one-year fixed term tenancy. That rent in the amount of \$1,500.00 is to be paid by the first day of each month, and that the Tenants had paid the Landlord a \$750.00 security deposit, and \$350.00 pet damage deposit at the outset of this tenancy.

The Landlord testified that the Tenants did not paid the rent for May and June 2020, in the amount of \$3,000.00. The Landlord is requesting a monetary order for the outstanding rent.

The Tenant agreed that they have not paid the rent for May and June 2020. The Tenant testified that they are experiencing financial difficulties due to the COVID-19 pandemic.

Both parties agreed that the Tenant applied for the COVID-19 rent subsidy from the government and that the rent subsidy program had paid the Landlord \$900.00 towards the Tenants' outstanding rent for this tenancy.

Both parties agreed that \$2,100.00 is outstanding in rent for this tenancy.

### Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

#### ***Rules about payment and non-payment of rent***

**26** (1) *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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

*(a) seize any personal property of the tenant, or*

*(b) prevent or interfere with the tenant's access to the tenant's personal property.*

(4) *Subsection (3) (a) does not apply if*

*(a) the landlord has a court order authorizing the action, or*

*(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.*

In this case, I accept the agreed upon testimony of these parties that the rent has not been paid in full for May and June 2020. I find that the Tenants breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for this tenancy, in the amount of \$2,100.00. I grant permission to the Landlord to retain the security deposit for this tenancy, in partial satisfaction of this award. Pursuant to section 38 (7) of the *Act*, I have not awarded the pet damage deposit.

***Return of security deposit and pet damage deposit***

**38 (7)** *If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.*

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord a monetary order of \$1,450.00, consisting of \$1,500.00 in rent for May 2020, \$1,500.00 in rent for June 2020 rent, less the \$900.00 rent subsidy the Landlord was paid by the government and less the \$750.00 security deposit the Landlord is holding for this tenancy.

**Conclusion**

I find for the Landlord under sections 26, 65 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$1,450.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 17, 2020

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Residential Tenancy Branch