



# 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

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for unpaid rent and compensation for damage and loss under the *Act*, the Residential Tenancy Regulation or tenancy agreement pursuant to section 67 of the *Act*;
- an authorization to retain the tenant's security deposit under Section 38 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 1:45 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlords attended the hearing and 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 landlords and I were the only ones who had called into this teleconference.

I accept the landlords' testimony that the tenant was served with the notice of hearing and evidence (the Materials) by registered mail on January 28, 2020 in accordance with section 89(1)(d) of the *Act* (the tracking number is recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenant is deemed to have received the Materials on February 02, 2020.

### Issues to be Decided

Are the landlords entitled to:

1. retain the tenant's security deposit?
2. receive a monetary award for compensation for unpaid rent?
3. receive a monetary award for compensation for damages caused by the tenant?
4. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is their obligation to present the evidence to substantiate their application.

The landlord testified the tenancy started on February 01, 2019 and ended on December 17, 2019. Monthly rent was \$1,200.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$600.00 was collected. In July 2019 the landlords returned to the tenant \$300.00 and still hold in trust \$300.00. The tenancy agreement was submitted into evidence.

Following a direct request application, the landlords were awarded an order of possession on December 02, 2019.

The tenant did not pay rent for December 2019 and was evicted by a bailiff on December 17, 2019. A bailiff invoice for \$2,466.13 was submitted into evidence. The landlord paid \$151.34 to change the locks, as the tenant did not return the keys. Two locksmith receipts were submitted into evidence.

A monetary order worksheet was submitted into evidence.

### Analysis

Sections 7 and 67 of the Act state:

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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### Unpaid Rent

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act. Pursuant to section 26(1) of the Act, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,200.00 on the first day of each month.

Based on the landlords' testimony, the tenancy agreement and the monetary order worksheet, I find the tenant did not pay rent in accordance with section 26(1) and of the Act and owes rent to the landlord in the amount of \$1,200.00 for December 2019.

Bailiff and locksmith

By not vacating the rental unit and being evicted by a bailiff the tenant did not comply with the order to vacate the premises. I accepted the landlords' uncontested testimony they needed to change the locks, as the tenant did not return the keys.

I find the bailiff cost of \$2,466.13 and locksmith cost of \$151.34 to change the locks, have been reasonably incurred. As such, I order the tenant to compensate the landlords in full for these expenses.

As the landlords were successful in this application, I find the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Security deposit

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlords are authorized to retain the \$300.00 balance of the security deposit to offset the monetary award for losses incurred due to the tenant's non-compliance with the Act.

In summary:

Unpaid rent December 2019	\$1,200.00
Bailiff	\$2,466.13
Locksmith	\$151.34
Filing fee	100.00
Subtotal	\$3,917.47
Minus balance of the deposit	\$300.00
<b>Total monetary award</b>	<b>\$3,617.47</b>

Conclusion

Pursuant to section 38 of the Act, I authorize the landlords to retain the tenant's security deposit of \$300.00 in partial satisfaction of losses incurred and grant the landlords a monetary order pursuant to sections 67 and 72 in the amount of **\$3,617.47**.

The landlords are provided with this order 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 23, 2020

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Residential Tenancy Branch