



# 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 was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$1,200.00 for unpaid rent or utilities, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord and the tenants attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence or their opportunity to review documentary evidence or the application.

### Preliminary and Procedural Matter

At the outset of the hearing the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 1, 2016 and reverted to a month to month tenancy after July 1, 2019. Monthly rent was \$2,200.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$1,100.00 at the start of the tenancy, which has accrued no interest under the Act, and which the landlord continues to hold.

The landlord's monetary claim of \$1,200.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid February 2020 rent	\$2,200.00
2. <i>Less tenants' \$1,100.00 security deposit</i>	<i>-( \$1,100.00)</i>
3. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,200.00</b>

The landlord testified that the tenants failed to pay rent for February 2020 in the amount of \$2,200.00. The tenants admitted that they did not pay rent and vacated the rental unit on February 29, 2020.

Both parties agreed that a formal 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) under the Act was not served on the tenants by the landlord. The tenants testified that they felt they had to move as the landlord requested that they move "soonest" and the tenants allege that the landlords did not use the proper forms to give notice to enter the rental unit during the tenancy. The tenants referred to a letter in evidence, which amounts to the tenants providing their one month notice to end the tenancy, which I will address later in this decision.

The parties were advised that section 26 of the Act requires that rent be paid in accordance with the Act, regardless of whether the landlord complies with the Act, which I will address later in this decision. In addition, there is no dispute that the tenants' written forwarding address included the incorrect name of the road they provided to the landlord as their written forwarding address, which was corrected during the hearing.

### Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

**Item 1** – Firstly, I find the letter from January 2020 served by the tenants on the landlord amounts to nothing more than some complaints to the landlord and the tenants providing their one month notice to end tenancy effective February 29, 2020. I find the tenants vacated on February 29, 2020 based on their own notice to end the tenancy.

The landlord has claimed for loss of rent for February 2020. I find the landlord did not serve the tenants with a 2 Month Notice under the Act based on the testimony of the parties. While the tenants may have felt that they needed to move based on a request from the landlords, the tenants did not have to move until served with a formal 2 Month Notice under the Act, and even then, had the ability to dispute a 2 Month Notice under the Act if they were served with one, which I find they were not. Therefore, as the parties confirmed that the tenants did not pay rent for February 2020 in the amount of \$2,200.00, section 26 of the Act applies and states:

**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.  
[Emphasis added]

In the matter before me, I find the tenants provided insufficient evidence to support that they had a valid right under the Act to deduct all or a portion of rent as the tenants confirmed that they did not apply for compensation under the Act due to the tenants' allegations that the landlord was not following the Act by failing to provide proper written notice, etc. Therefore, I find the landlord has met the burden of proof and I find the tenants breached section 26 of the Act by failing to pay rent for February 2020. As a result, I award the landlord **\$2,200.00** for unpaid rent for February 2020.

As the landlord's claim is fully successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act. Therefore, I find the landlord has established a total monetary claim of **\$2,300.00**.

As the landlord continues to hold the tenants' \$1,100.00 security deposit and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenants' full \$1,100.00 security deposit including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the balance owing by the tenants to the landlord in the amount of **\$1,200.00**.

**I caution** the tenants not to breach section 26 of the Act in the future.

### Conclusion

The landlord's claim is fully successful.

The landlord has established a total monetary claim of \$2,300.00. The landlord has been authorized to retain the tenants' full security deposit including \$0.00 in interest of \$1,100.00 in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of \$1,200.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenants have been cautioned as noted above.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 10, 2020

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Residential Tenancy Branch