



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, MNDL-S, OPR, FFL

### Introduction

In this dispute, the landlord seeks compensation for unpaid rent pursuant to sections 26 and 67 of the *Residential Tenancy Act* (the “Act”), and, compensation for other matters related to the condition of the rental unit, pursuant to section 67 of the Act. In addition, the landlord seeks recovery of the filing fee pursuant to section 72 of the Act.

It is worth noting that, while the landlord applied for an order of possession for unpaid rent pursuant to sections 46 and 55 of the Act, for reasons that will be explained in this decision, that aspect of the landlord’s application will not be considered.

The landlord applied for dispute resolution on June 17, 2020 and a dispute resolution hearing was held, by way of teleconference, on Tuesday, July 28, 2020. The landlord and the two tenants attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

### Issues

1. Is the landlord entitled to compensation as claimed, for unpaid rent?
2. Is the landlord entitled to compensation as claimed, for other costs?
3. Is the landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began on April 1, 2019, and monthly rent was \$2,100.00, which was due on the first of the month. The tenants also paid a security deposit in the amount of \$1,050.00, which the landlord currently retains in trust pending the outcome of this dispute. A copy of the written tenancy agreement was submitted into evidence.

The tenants ran into various financial difficulties in the spring of 2020 and were unable to make the full rent payment of \$2,100.00 on April 1, 2020. They did, however, pay the landlord \$1,000.00 for April. The tenant testified that the landlord had agreed to accept \$1,000.00 as the “full” rent, but that the landlord later “changed his mind.” It should be noted that the tenants did not submit any documentary evidence that the landlord had agreed to this lower amount.

The landlord testified that the tenants owe \$1,100.00 in rent for April, \$2,100.00 in rent arrears for May, \$2,100.00 in rent arrears for June, and \$2,100.00 for July, for a total of \$7,400.00. As an aside, the landlord sought compensation for part of the rent for August (given that they have found a new tenant who is moving in on August 15). However, I can only award losses incurred as of the date of the hearing, not future losses.

In terms of how the tenancy came to an end, the tenants testified that the landlord gave them an “eviction notice” by text and by email during the pandemic, which they acknowledged and accepted, even though they similarly recognized was an invalid notice. Nonetheless, the tenants remained in, and continued to occupy the rental unit, until they moved out on June 30, 2020. On July 3, 2020, they sent an email to the landlord telling them that “we have left.” The key to the rental unit was slid under the door of the rental unit on June 30.

In respect of the landlord’s claim for compensation unrelated to unpaid rent, the landlord seeks compensation for various costs related to cleaning the rental unit (\$480.00), repairing and painting the walls (\$200.00), installation of closet doors and blinds (\$120.00), repairing the toilet and dumping garbage (\$80.00), and “Supply Fab [sic - fob?] for parking” in the amount of \$130.00.

No Condition Inspection Report was submitted into evidence, and the tenants disputed the landlord’s claims regarding these various amounts. Various photographs of the rental unit, taken before and after the tenancy, were submitted into evidence. The tenants did admit to removing one of the closet doors, however, and to perhaps damaging the blinds.

## Analysis

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.

### **Claim for Unpaid Rent**

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Notwithstanding the difficult financial circumstances of the tenants, for which I am wholly sympathetic, the Act does not take into consideration the personal circumstances of why a tenant might not be able to pay rent.

The tenants did not dispute the landlord's claim for unpaid rent. Further, regardless of whether the landlord's notice to end the tenancy was valid or not (it was not), the tenants occupied the rental unit until June 30, 2020.

As for the landlord's notice to end the tenancy for unpaid rent, the landlord was prohibited from issuing any such notice during the pandemic, pursuant to *Residential Tenancy (COVID-19) Order*, MO 89/2020. As such, notwithstanding the tenants' "acceptance" of the notice, neither the notice itself nor the tenants' acceptance was of any legal force or effect.

As for the tenants' notice to end the tenancy, they provided "notice" on July 3, 2020, after they had vacated the rental unit on June 30, 2020. Section 44(1)(d) of the Act states that "A tenancy ends only if one or more of the following applies: [. . .] the tenant vacates or abandons the rental unit". In this case, the tenants vacated the rental unit on June 30, 2020, and returned the key (albeit under the door) on that same date. Thus, the "notice" sent to the landlord on July 3, 2020 was, I conclude, not a valid notice to end the tenancy, but more along the lines of an "FYI."

In a month to month (or, periodic) tenancy, such as the tenancy was here, tenants are required to provide a notice to the landlord in compliance with section 45(1) of the Act:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Here, the tenants provided no such notice. Rather, they simply left. The tenants breached the Act by failing to provide sufficient notice to the landlord, and as a result the landlord suffered a loss of rent for July 2020 in the amount of \$2,100.00. The landlord's loss cannot be attributed to any other event. However, there is one last matter to which I must now turn.

When an applicant seeks compensation for a monetary loss, they "must do whatever is reasonable to minimize the damage or loss," as per section 7(1) of the Act. While the landlord provided testimony that they suffered a loss of rent for July 2020, no evidence was provided, either orally or by way of documentary evidence, that the landlord took steps to minimize their loss of rent for that month. As such, in the absence of any such evidence provided during the hearing, I must conclude that the landlord failed to do whatever was reasonable to minimize the loss of rent. As such, I am only prepared to find that they suffered a loss of rent for the three-day period of July 1 to 3, inclusive, in the amount of \$203.23 (calculated at a per diem rate of \$67.74 for the month of April).

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for unpaid rent, and the claim for loss of rent, in the total amount of \$5,503.23. (\$1,100.00 for April, \$2,100.00 for May, \$2,100.00 for June, and \$203.23 for July.)

### **Claim for Cleaning, Painting, and other Matters**

Regarding this aspect of the landlord's application, the landlord claimed that various costs were incurred as a result of how the tenants left the rental unit.

Subsection 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. It is on the basis of an alleged breach of this section of the Act for which the landlord seeks compensation. The tenants disputed this claim by the landlord.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above their testimony* to establish their claim. In this case, I find that the landlord has failed to provide any evidence that the tenants breached this section of the Act which resulted in the large amount claimed. As such, but for the tenants' admission to removing a door and a matter concerning the blinds, the landlord has not proven his claim.

I do not find the photographs of the rental unit to provide sufficient evidence that the tenants left the rental unit in such a state of uncleanness and disarray that the landlord somehow incurred costs in excess of \$1,000.00. And, in the absence of any Condition Inspection Report, there is, quite frankly, insufficient evidence to establish the landlord's claim. Except for a nominal damage award, which is discussed below, I dismiss the landlord's claim for compensation.

Finally, taking into consideration the tenants' acknowledgement of the door being removed and the blinds damaged, or bent (it is unclear what occurred), I conclude that there was a *prima facie* breach of section 37(2) of the Act for which the landlord is entitled to a nominal damages award in the amount of \$50.00.

### **Claim for Recovery of Filing Fee**

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful in regard to one of the two aspects of their application, I partially grant their claim for reimbursement of the filing fee in the amount of \$50.00.

### **Summary of Award and Retention of Security Deposit**

In summary, I award the landlord \$5,603.23.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlords may retain the tenants' security deposit of \$1,050.00 in partial satisfaction of the above-noted award.

A monetary order for \$4,553.23, representing the balance of the award, is issued to the landlord.

Conclusion

**I HEREBY**

- 1. grant the landlord's application, in part, and award the landlord a total of \$5,603.23;**
- 2. order the landlord to retain the tenants' security deposit of \$1,050.00; and**
- 3. grant the landlord a monetary order in the amount of \$4,553.23, which must be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims 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 Act.

Dated: July 29, 2020

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Residential Tenancy Branch