



# 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

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order for unpaid rent and for future rent loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the owner of the rental unit and that he had permission to represent the other co-owner, his father, at this hearing.

The landlord testified that he sent a copy of the landlord's application for dispute resolution hearing package to the tenant by way of registered mail on April 15, 2020 to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on April 20, 2020, five days after its registered mailing.

### Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include June, July and August 2020 rent of \$2,100.00 for each month. I find that the tenant is aware that rent is due as per her tenancy

agreement. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain the tenant's deposits?

Is the landlord entitled to recover the filing fee paid for this application?

### Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on August 1, 2019. Monthly rent in the amount of \$2,100.00 is payable on the first day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$200.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord seeks a monetary order of \$6,350.00 for unpaid rent and the \$100.00 filing fee paid for this application. The landlord claimed that the tenant failed to pay rent of \$2,100.00 for each month from June to August 2020, totalling \$6,300.00. He said that the tenant also failed to pay rent of \$50.00 for May 2020.

### Analysis

As per section 26 of the *Act*, the tenant is required to pay rent on the date indicated in the tenancy agreement, which is the last day of each month in advance. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$6,350.00 from May to August 2020. Therefore, I find that the landlord is entitled to \$6,350.00 in rental arrears from the tenant.

Since the tenancy is ongoing, I dismiss the landlord's application to retain the tenant's deposits, with leave to reapply. The deposits are to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

As the landlord was mainly successful in this application, I find that he is entitled to recover the \$100.00 application filing fee from the tenant.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$6,450.00 against the tenant. 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.

The landlord's application to retain the tenant's security and pet damage deposits is dismissed with leave to reapply. The deposits are to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: August 14, 2020

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Residential Tenancy Branch