



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. 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.

### Preliminary Issue- Service

The landlords testified that tenant K.T. was served with the landlords' application for dispute resolution via registered mail on April 20, 2020. The landlords' provided the Canada Post tracking number to confirm the above mailing. The Canada Post website states that the package was delivered on April 22, 2020. The tracking number is located on the cover page of this decision. I find that tenant K.T. was served with the landlords' application for dispute resolution on April 22, 2020 in accordance with section 89 of the *Act*.

The landlords testified that tenant T.T. was served with the landlords' application via e-mail on April 20, 2020. The e-mail was not entered into evidence. I provided the landlords with 24 hours to upload the email serving tenant T.T. with the landlords' application for dispute resolution. The landlords uploaded emails dated August 4, 2020 regarding the hearing, but not the April 20, 2020 email in which tenant T.T. was served with the landlords' application for dispute resolution. I find that landlords have not proved that tenant T.T. was served in accordance with the Director's Order dated March 30, 2020 which allowed service via email. I dismiss the landlords' claim against tenant T.T. for failure to prove service.

#### Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9(3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlords' original application claimed unpaid rent in the amount of \$7,050.00. Since filing for dispute resolution, the landlords testified that the amount of rent owed by the tenants has increased to \$11,850.00.

I find that the fact that the landlords are seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlords' application to include a monetary claim for all outstanding rent in the amount of \$11,850.00.

#### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?

2. Are the landlords entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. This tenancy began on July 8, 2019 and ended on June 8, 2020. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1050.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified that the tenants owe \$11,850.00 in unpaid rent. The landlords testified to the following rental payments and arrears:

<b>Month</b>	<b>Rent Due</b>	<b>Rent Paid</b>	<b>Total Rental Arrears</b>
December 2019	\$2,100.00	\$1,050.00	\$1,050.00
January 2020	\$2,100.00	\$200.00	\$2,950.00
February 2020	\$2,100.00	\$1,600.00	\$3,450.00
March 2020	\$2,100.00	\$0.00	\$5,550.00
April 2020	\$2,100.00	\$0.00	\$7,650.00
May 2020	\$2,100.00	\$0.00	\$9,750.00
June 2020	\$2,100.00	\$0.00	\$11,850.00

The landlords testified that the tenants did not provide a notice to end tenancy prior to moving out.

The landlords testified that the tenants did not provide their forwarding address at the end of the tenancy.

The landlords entered into evidence numerous text messages between the landlords and the tenants in which the tenants acknowledge outstanding rent.

### Analysis

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 \$2,100.00 on the first day of each month. Based on the undisputed testimony of the landlords and the text messages entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$11,850.00 in unpaid rent from December 2019 to June 2020.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
  - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlords made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,050.00.

### Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Unpaid rent	\$11,850.00
Filing fee	\$100.00

Less security deposit	-\$1,050.00
<b>TOTAL</b>	<b>\$10,900.00</b>

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: August 25, 2020

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Residential Tenancy Branch