



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LE GERS PROPERTIES INC. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on May 5, 2020. The Landlord applied for a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

Two agents for the Landlord (the "Landlord") attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been personally served to the Tenant on May 6, 2020. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter - Amendment

During these proceedings, it was noted that the Landlord had applied for a monetary order for unpaid rent, but they had also included a request for the recovery of carpet cleaning costs on their monetary worksheet.

The Landlord confirmed that this was their first arbitration proceedings, and they had made a mistake in the application codes they had selected for these proceedings.

Section 4.2 of the Residential Tenancy Branches Rules of Procedure state the following:

#### **4.2 Amending an application at the hearing**

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.

I find that the Respondent, the Tenant, could have reasonably anticipated this amendment request as the reason for the amount requested had been indicated on the Landlord's monetary worksheet and had been included in the total dollar amount request in their application. Therefore, I grant the Landlord's request to amend their application during this hearing.

I will proceed on the Landlord's amended application for a monetary order for unpaid rent, for a monetary order for losses or money owed due to the tenancy, for permission to retain the security deposit, and for the recovery of the filing fee for this application.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for losses or money owed due to the tenancy?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

The tenancy agreement shows that the tenancy began on October 1, 2019, as a one-year fixed term tenancy. The Landlord testified that rent in the amount of \$1,470.00 was to be paid by the first day of each month and that the Landlord had been given a \$715.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the Tenancy agreement into documentary evidence.

The Landlord also submitted a copy of a mutual agreement to end tenancy, signed between these parties into documentary evidence. The mutual agreement to end tenancy recorded an end of tenancy date of May 31, 2020, and the Landlord confirmed that the Tenant moved out of the rental unit in accordance with the mutual agreement to end tenancy.

The Landlords testified that the Tenant had ended their tenancy with \$2,190.00 in unpaid rent, consisting of \$720.00 for April 2020 and \$1,470.00 for May 2020. The Landlord is requesting a monetary order for the outstanding rent.

The Landlord also testified that they had the carpets cleaned at the end of this tenancy, at the cost of \$84.00. The Landlord is requesting a monetary order for the recovery of their costs to have the carpet cleaned. The Landlord submitted an invoice for the carpet cleaning into documentary evidence.

### Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

#### ***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.***

***(2) A landlord must provide a tenant with a receipt for rent paid in cash.***

*(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

*(a) seize any personal property of the tenant, or*

*(b) prevent or interfere with the tenant's access to the tenant's personal property.*

*(4) Subsection (3) (a) does not apply if*

*(a) the landlord has a court order authorizing the action, or*

*(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.*

In this case, I accept the Landlord's undisputed testimony that the full rent has not been paid for April and May 2020. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$2,190.00, comprised of \$720.00 in rent for April and \$1,470.00 in rent for May 2020. I grant the Landlord permission to retain the security deposit for this tenancy in partial satisfaction of this award.

I also accept the undisputed testimony of the Landlord that the Tenant returned the rental unit with uncleaned carpets at the end of this tenancy, and that it had cost the Landlord \$84.00 to have the carpets cleaned. Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$84.00 to recover their costs to have the carpets cleaned at the end of this tenancy.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$1,659.00, consisting of \$2,190.00 in unpaid rent, \$84.00 in the recovery of carpet cleaning costs, \$100.00 in the recovery of the filing fee for this hearing, less the \$715.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$1,659.00**. The Landlord is 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: September 3, 2020

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Residential Tenancy Branch