



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award and
- recovery of the filing fee.

The landlord attended the hearing; however, the tenant did not attend.

The landlord stated he served the tenant with his application for dispute resolution and Notice of Hearing by registered mail on June 6, 2020. The landlord provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. That number is listed on the style of cause page in this Decision.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89 of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions are reproduced here; further, only the evidence specifically referenced and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlord's application dealt with his claim for unpaid rent from March through May 2020, as his application was made on May 12, 2020. The landlord said that he has also not been paid the monthly rent for the months of June and July 2020, and wished to amend his application to include a claim for those months.

Rule 4.2 allows for an amendment to an application at the hearing, in circumstances such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I therefore allow the tenant to amend his monetary claim to include an additional two months unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the filing fee?

Background and Evidence

The landlord submitted that he purchased and took possession of the residential property unit on December 4, 2019. As the tenant lived in the rental unit on the subject property at the time, on December 18, 2019, the landlord served the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice), with an end of tenancy date of February 29, 2020.

The written tenancy agreement, showing the former owners as landlords, indicated the tenant owed a monthly rent of \$1,050 and a security deposit being paid, in the amount of \$525.

The landlord retained the tenant's security deposit, having made this claim against it.

The landlord submitted the tenant failed to move out of the rental unit on the effective date of the Notice, February 29, 2020, and he applied for dispute resolution for an order of possession of the rental unit based upon the Notice. The landlord referred to that Decision of May 11, 2020, which is listed on the style of cause page of this Decision.

In that Decision, the landlord was granted an order of possession of the rental unit effective within two days of the order of possession of the rental unit being served on the tenant.

The landlord submitted that the tenant did not vacate the rental unit until the end of July 2020, after he obtained a writ of possession.

In support of his application, the landlord said that the tenant failed to pay the overholding monthly rent for March, April, May, June and July, 2020. Due to this, the tenant owes the amount of \$5,250, which is the amount of unpaid rent of \$1,050 for each of these months.

The landlord also said the tenant was given free rent for the month of February 2020, as compensation for receiving the Notice.

The landlord also claimed the amount of \$25 for each of the five months, for late payments. In response to my inquiry, the landlord said that the written tenancy agreement did not provide for that fee.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

As the tenant failed to attend the hearing despite being properly served, I consider this application to be unopposed.

Section 57 of the Act describes an “overholding tenant” as a tenant who continues to occupy a rental unit after the tenancy is ended.

In this case, as described in the previous Decision, the tenant failed to dispute the Notice and was presumed to have accepted the tenancy ended on February 29, 2020. I find that the tenant overheld in the rental unit following the presumed end of tenancy on February 29, 2020, and stayed in the rental unit for five months beyond, without paying rent.

I find that the landlord has proven the existence of loss stemming directly from a contravention of the Act on the part of the tenant and I find that the landlord is therefore

entitled to recover unpaid rent of \$1,050 for each month from March through July 2020, or a total of \$5,250.

I dismiss the landlord's claim for a late payment fee of \$25 for each of the months the tenant failed to pay rent, as there was no such provision in the written tenancy agreement, as required by Residential Tenancy Regulation 7(2).

As the landlord was successful in his application, he may recover the \$100 filing fee from the tenant. Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit in partial satisfaction for a return of the monetary award.

### Conclusion

I issue a monetary order of \$4,825 in favour of the landlord as follows:

ITEM	AMOUNT
1. Unpaid rent, March-July, '20, \$1,050 each	\$5,250
2. Return of filing fee	\$100
3. Less security deposit	(\$525)
<b>TOTAL</b>	<b>\$4,825</b>

The landlord is provided with a Monetary 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 11, 2020

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Residential Tenancy Branch