



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL, FFL, MNDCL, MNDL**

### Introduction

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

- A monetary award for unpaid rent, damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member.

As both parties were present service was confirmed. The parties each confirmed receipt of the materials. While the landlord questioned the contents of the materials received from the tenant they confirmed receipt. Based on the testimonies I find each party was duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The tenant gave lengthy testimony regarding the background of this tenancy, their business arrangements with other parties and potential litigation they intended to

commence in other courts. The principal aspects of this claim and my findings around each are set out below.

This tenancy began on December 1, 2019. The parties signed a written tenancy agreement with the named respondents as the tenants of the rental unit. The tenant explained that they never intended to reside in the rental unit and their intention was to find and manage sub-tenants who would reside in the rental unit. The tenancy agreement provides that monthly rent in the amount of \$2,250.00 payable on the 2<sup>nd</sup> of each month. The parties prepared a move-in condition inspection report which is signed by the parties.

The landlord submits that the tenant made partial payment of \$740.00 for April 2020 but did not make any subsequent payments for the remaining duration of the tenancy. The landlord says that the tenant occupied the rental unit until sometime in August 2020 and seeks a monetary award in the amount of \$10,510.00 for unpaid rent arising from this tenancy.

The landlord submits that the tenant abandoned the rental unit at some point in August 2020 and they did not participate in a move-out inspection. The landlord submits that when they inspected the suite they noted considerable damage requiring cleaning and replacement of appliances and fixtures. The landlord seeks a monetary award in the amount of \$1,237.37 for the cost of cleaning, repairs and replacement they submit they incurred.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that there was an enforceable tenancy agreement between the parties wherein the tenant was obligated to pay monthly rent in the amount of \$2,250.00. I find the tenant's submissions regarding peripheral business arrangements and that they had another residence to be irrelevant to the matter at hand. The tenant testified that they are an agent in the business of managing tenancies. As such, I find that the tenant was, or

ought to have been, aware of their obligations under the tenancy agreement that they personally signed and entered. Based on the documentary evidence submitted, including the correspondence between the parties it is clear that the tenant understood their obligation to pay rent pursuant to the tenancy agreement. While there may have been other issues including leaks in the rental unit, rules set by strata management companies and difficulty finding new sub-tenants, I find that these do not absolve the tenant from their obligations under the tenancy agreement to pay the rent.

I accept the evidence of the parties that the tenant failed to pay the full rent payable under the tenancy agreement for the months of April through August 2020 and that there is an arrear of \$10,510.00 as at the date of the hearing.

The unpaid rent arises from the months of April through August, 2020 and therefore falls within the definition of Affected rent as defined in the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation ("C19 Tenancy Regulation"). In accordance with the C19 Tenancy Regulation and as detailed in Residential Tenancy Policy Guideline 52, if a tenancy has ended prior to a repayment plan being given an arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

Accordingly, I issue a monetary award in the landlord's favour for the unpaid rent of \$10,510.00.

While the landlord submits that there was extensive damage in the rental unit, I find insufficient evidence to support this portion of their monetary claim. I find that the copy of the move-out inspection report unsigned and undated at the end of the tenancy with some notations about damage to be insufficient to establish that the landlord incurred the costs they claim were necessary for repairs and replacement. The landlord submitted some photographs of replacement parts and quotes for cleaning in support of their monetary claim, but I find that there is insufficient evidence to establish that these costs are necessary or incurred as a result of the tenant. Consequently, I dismiss this portion of the landlord's application.

As the landlord was not wholly successful in their claim I decline to issue an award of the filing fees for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$10,510.00. 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 balance of the landlord's application is dismissed without leave to reapply.

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 21, 2020

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Residential Tenancy Branch