



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCL-S, MNRL-S, FFL**

### **Introduction**

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared, assisted by a family member, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their notice of application and evidence by email on June 6, 2020 to an email address routinely used by the tenant to correspond regarding tenancy matters from the landlord's email address routinely used for such matters. Based on the evidence I find that, pursuant to section 71(2) of the *Act* and the order of the Director dated March 30, 2020, the tenant is deemed served with the landlord's materials on June 9, 2020, three days after emailing.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenant?



### Background and Evidence

The landlord provided undisputed evidence on the following facts. This tenancy began on August 1, 2019. Monthly rent was \$1,150.00 payable on the first of each month. A security deposit of \$575.00 was collected and is still held by the landlord.

The tenant failed to pay rent for the months of April and May, 2020 and subsequently terminated the tenancy without notice, leaving the rental unit on or about May 24, 2020. The landlord submits that there is a rental arrear of \$2,300.00.

The landlord says that they incurred costs to clean and repair the rental unit due to the condition it was left when the tenant abandoned the suite.

### 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 accept the evidence of the landlord that there was a valid tenancy agreement wherein the tenant was obligated to pay rent in the amount of \$1,150.00 each month. I accept the evidence of the landlord that the tenant failed to pay the rent for the months of April and May, 2020 and subsequently ended the tenancy with a rental arrear of \$2,300.00. Accordingly, while the rental arrear arises from unpaid affected rent as defined in the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation, as expanded upon in Residential Tenancy Policy Guideline 52:

If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the 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 order in the landlord's favor in the amount of \$2,300.00 as at the date of the hearing.



I accept the evidence of the landlord that they incurred costs to clean and repair the rental unit due to the tenancy. I further accept the evidence of the landlord that the cost of their work was \$200.00. Therefore, I issue a monetary award in the landlord's favour for that amount.

As the landlord was successful in their application, they are entitled to recover the filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's full security deposit in partial satisfaction of the monetary award issued in the landlord's favour

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,025.00, allowing the landlord to recover the unpaid rent, cleaning cost, and filing fee and to retain the security deposit for this tenancy. 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 29, 2020

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Residential Tenancy Branch