



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westwynd Realty and  
[tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

This hearing originally convened on October 1, 2020 and was adjourned to October 16, 2020 for the sole purpose of confirming whether or not the payments the tenant testified she paid to the landlord on October 1, 2020 had sufficient funds and were not returned for insufficient funds. The October 1, 2020 Interim Decision should be read in conjunction with this Decision.

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order to restrict or suspend the landlord's right to enter, pursuant to section 70.

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

- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant and the landlord's agent (the "agent") attended the first hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

A friend of the tenant attended the second hearing and testified that he is not representing the tenant and only called in to pass on the message that the tenant told him that she is going to the hospital this morning and that the tenant uploaded a letter into evidence stating same. No such letter was entered into evidence.

The landlord's agent (the "agent") attended the second hearing and was each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

In the hearing the landlord confirmed the tenant's testimony regarding payments made by the tenant in October 2020. The agent uploaded a ledger stating same. I find that there is a real probability that the tenant's absence was planned in an attempt to further prolong these proceedings and avoid her responsibilities under the *Act*. I find that even if the tenant was in hospital today, because the agent confirmed the tenant's testimony regarding the October 2020 rent payments made by the tenant, and this confirmation was the only reason the October 1, 2020 hearing was adjourned, the tenant's absence made no change to the outcome of the decision and this hearing will not be adjourned.

### **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 landlord's original application claimed unpaid rent in the amount of \$6,150.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$12,225.00. The agent testified that the landlord is also seeking a \$25.00 late fee for September and October's rent, an NSF fee for September 2020 and a replacement fob fee of \$50.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, late fees, NSF fees and fob fees, 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 landlord's application to include a monetary claim in the amount of \$12,350.00.

### **Background/Evidence**

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

Both parties agreed to the following facts. This tenancy began on August 19, 2018 and is currently ongoing. Monthly rent in the amount of \$2,050.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

In the first hearing both parties agreed on the below table of rental arrears from April 2020 to September 2020. In the first hearing the tenant testified she paid \$1,875.00 towards rent on October 1, 2020, the day of the hearing. On October 1, 2020 the agent testified the funds had not yet been cleared by the landlord's financial institution and so I adjourned the hearing to confirm the amount of rent outstanding. In the second hearing the landlord testified that the payments the tenant testified she made on October 1, 2020 totalling \$1,875.00 were made and were not returned due to insufficient funds.

<b><u>Month</u></b>	<b><u>Rent Due</u></b>	<b><u>Rent Paid</u></b>	<b><u>Total Rental Arrears</u></b>
April 2020	\$2,050.00	\$0.00	\$2,050.00
May 2020	\$2,050.00	\$0.00	\$4,100.00
June 2020	\$2,050.00	\$0.00	\$6,150.00
July 2020	\$2,050.00	\$0.00	\$8,200.00
August 2020	\$2,050.00	\$0.00	\$10,250.00
September 2020	\$2,050.00	\$250.00	\$12,050.00
October 2020	\$2,050.00	\$1,875.00	\$12,225.00

The tenant did not dispute the above rental arrears but testified that \$50.00 from the September payment was meant to go to the fob fee, and not rent.

The agent testified that the landlord is also seeking the following damages:

<u>Item</u>	<u>Amount</u>
September 2020 late fee	\$25.00
October 2020 late fee	\$25.00
Fob fee	\$50.00
Fob NSF fee	\$25.00
<b>Total</b>	<b>\$125.00</b>

Both parties agree that the tenant lost her fob and asked the landlord for a new one in April 2020. Both parties agree that the tenant wrote the landlord a cheque in the amount of \$50.00 for a new fob, but this cheque bounced. The agent testified that the bounced cheque incurred a \$25.00 NSF charge.

Section 8 of the tenancy agreement states:

Late payment, returned and non sufficient fund cheques (N.S.F.), are subject to a minimum service charge of \$25.00 each or the then current rate charged for such services by [the landlord's bank], whichever is more....

The landlord testified that he served the tenant with a Repayment Plan via registered mail on August 18, 2020. The tenant confirmed receipt of the Repayment Plan on or around August 22, 2020. The Repayment Plan states that the repayment schedule is from October 1, 2020 to July 1, 2020 and that the tenant must pay equal monthly installments on the first day of each month in the amount of \$1,025.00. The tenant testified that she could not afford to pay her outstanding rent in accordance with the repayment schedule. The Repayment Plan- RTB#14 was entered into evidence.

The tenant testified that she is seeking an Order restricting the landlord's right of entry to the subject rental property. The tenant testified that the landlord's agents have entered the subject rental property without notice or with an illegal notice. The tenant testified that she has received notices of entry from the landlord, but they were illegal because the time stated on the notice is from 8am to 5 pm, which is too long a period of time.

The tenant testified that on September 2, 2020 the landlords knocked on the door and proceeded to enter the subject rental property when she was in the shower. The tenant testified that the landlord's agents have put their key in her door and knocked

afterwards. The tenant testified that the landlord's agents have gone through her things, taken pictures and moved her furniture.

The agent testified that the landlord always complies with the *Act* and provides the tenant with at least 24 hours notice of inspections but that the tenant has been combative since the beginning of the tenancy. The agent testified that due to the tenant's combative behaviour the landlord's agents always attend the subject rental property in pairs and record their dealing with the tenant. The landlord entered into evidence a video recording of the September 2, 2020 inspection. In the video two agents of the landlord can be seen knocking on the tenant's door. At no point in time did the agents use their key or enter the property. The tenant can be heard telling the landlord's agents that she did not receive the notice of inspection and denying the landlord's agents entry. The agents then left the subject rental property without opening the door.

The landlord entered into evidence emails between the landlord's agents and the tenant in which the tenant acknowledges that she received the Notice of Entry for September 2, 2020.

The agent testified that the tenant has been issued several breach notices for refusing to allow entry after Notices of Entry have been provided. The breach notices and Notices of Entry were entered into evidence.

The agent testified that the tenant has a history of fabricating claims and lying in hearings. The landlord entered into evidence a previous decision from the Residential Tenancy Branch between the parties at the subject rental address in which the tenant's claims were dismissed because the arbitrator found the tenant not to be credible and that she fabricated her claims. The file number for the previous decision is on the cover page of this decision.

## **Analysis**

### **Landlord's Claim**

Residential Tenancy Regulation C19 states at section 3(2):

The landlord must give the tenant a repayment plan if  
(a) the tenant has overdue affected rent, and

(b) subject to subsection (3), the landlord and tenant did not enter into a prior agreement.

Residential Tenancy Regulation C19 defines “affected rent” as:

- (a) rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the specified period, and
- (b) utility charges that become due to be paid by a tenant during the specified period, if a tenancy agreement requires the tenant to pay utility charges to the landlord;

Residential Tenancy Regulation C19 defines “specified period” as

the period that starts March 18, 2020 and ends on the earlier of the following:

- (a) August 17, 2020;
- (b) the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the Emergency Program Act expires or is cancelled.

Section 12(2) of the Residential Tenancy Regulation C19 states:

The landlord must give the tenant a repayment plan if

- (a) the tenant has overdue affected rent, and
- (b) subject to subsection (3), the landlord and tenant did not enter into a prior agreement.

I find that the landlord served the tenant with a Repayment Plan that meets the requirement of Residential Tenancy Regulation C19.

Based on the testimony of both parties and the rent ledger entered into evidence, I find that the tenant defaulted on the Repayment Plan and all affected rent, in the amount of \$10,250.00, is immediately due and payable.

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 \$2,050.00 on the first day of September and October 2020 and failed to do so in full. Based on the testimony of the agent and the ledger 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 \$1,975.00 in unpaid rent.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Pursuant to the above and my findings on unpaid rent, I find that the landlord is entitled to recover \$50.00 for September and October 2020's late rent fees and \$25.00 for the N.S.F. charge for the bounced fob cheque.

As both parties agree that the tenant lost the fob and agreed to pay \$50.00 for its replacement, I find that the landlord is entitled to recover the \$50.00 fob fee.

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 landlord 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 or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,000.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Tenant's Claim

Section 29(1) of the *Act* states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Section 29(2) of the *Act* states that a landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

Section 70(1) of the *Act* states that the director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*].

Based on the testimony and the evidence provided by the parties, I find that the tenant has failed to prove, on a balance of probabilities, that the landlords ever entered the subject rental property without providing at least 24 hours notice or entered when the tenant refused the landlord's access. I find that the tenant lied to the landlord's agents on September 2, 2020 when she told them that she did not receive the Notice of Entry for that day.

I find that the Notices of Entry served on the tenant complied with the *Act*; however, the timeframe provided was very large. The *Act* and Residential Tenancy Branch Policy Guidelines do not provide guidance on the timeframe of entry required on Notices of Entry. I find that given this lack of guidance, the landlord's Notices of Entry were valid;



however, I Order the landlord provide a three-hour window for any further Notices of Entry to the tenant.

### **Conclusion**

I Order the landlord provide a three-hour window for any further Notices of Entry to the tenant.

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

<b>Item</b>	<b>Amount</b>
Unpaid affected rent	\$10,250.00
Unpaid unaffected rent	\$1,975.00
Late fees	\$50.00
NSF fee	\$25.00
Fob fee	\$50.00
Filing Fee	\$100.00
Less security deposit	-\$1,000.00
<b>TOTAL</b>	<b>\$11,450.00</b>

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 landlord 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: October 16, 2020

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Residential Tenancy Branch