



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

On June 23, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

A.C. attended the hearing as an agent for the Landlord; however, the Tenant did not appear at any point during the 15-minute teleconference hearing. All parties in attendance provided a solemn affirmation.

A.C. advised that she served the Notice of Hearing and evidence package to the Tenant by registered mail and email on June 23, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on June 26, 2020. Based on this undisputed testimony, I am satisfied that the Tenant has been served the Notice of Hearing and evidence package. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

A.C. advised that the tenancy started on March 6, 2020, that rent was established at \$1,250.00 per month, and that it was due on the first day of each month. A security deposit of \$625.00 was supposed to be paid; however, the Tenant's cheque for this was returned due to insufficient funds. A copy of the signed tenancy agreement was submitted into evidence.

She stated that the Tenant's pro-rated March 2020 rent was paid in full; however, the Tenant's April to August 2020 rent went unpaid due to insufficient funds payments. For each of these months, there was also a \$25.00 insufficient funds charge, as per the tenancy agreement. She advised that the Landlord was seeking compensation in the amount of **\$6,375.00**, which was comprised of \$1,250.00 for April 2020 rental arrears, \$1,250.00 for May 2020 rental arrears, \$1,250.00 for June 2020 rental arrears, \$1,250.00 for July 2020 rental arrears, and \$1,250.00 for August 2020 rental arrears. In addition, there was a \$25.00 insufficient funds charge for each of these five months.

She stated that the Tenant was provided with a repayment plan for rent arrears, due to the COVID pandemic, on or around August 23, 2020. The amount of rent outstanding was \$6,250.00 and according to the repayment plan, the Tenant would owe \$625.00 starting on October 1, 2020 to start paying back the affected rent arrears. She stated that the Tenant paid September 2020 rent in full, that he paid the October repayment plan amount of \$625.00 on October 1, 2020, but he did not pay October 2020 rent at all. She advised that this tenancy is still ongoing; however, a 10 Day Notice to End Tenancy for Unpaid Rent has been served to the Tenant for October 2020 rental arrears.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Given the circumstances of the global pandemic, I find it important to reference Policy Guideline # 52 to address this specific Application. In this Policy Guideline, affected rent

means “rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the ‘specified period’ between March 18, 2020 and August 17, 2020.”

Furthermore, section E in this Policy Guideline states the following:

**APPLICATIONS FOR MONETARY ORDERS FOR UNPAID AFFECTED RENT MADE BEFORE JULY 31, 2020**

If a valid repayment plan has been given to a tenant and the tenant is in good standing because:

- the first payment has not come due, or
- the tenant is paying the installments as required,

an arbitrator may grant a monetary order but it will be subject to the terms of the repayment plan. The order will set out that the tenant must pay the unpaid affected rent in accordance with the repayment plan.

If a landlord and tenant have entered into a valid prior agreement and the tenant is in good standing, as set out above, then unless there are exceptional circumstances, an arbitrator will not grant a monetary order subject to the terms of the prior agreement. This is because the prior agreement can unilaterally be cancelled at any time by either party.

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.

Where a landlord is required to give a repayment plan but no valid repayment plan has been given and no valid prior agreement exists, the arbitrator may assist the parties in completing a repayment plan that meets the requirements of the C19 Tenancy Regulation **or dismiss the application with leave to reapply.**

With respect to the Landlord’s claims for rental loss, the undisputed evidence before me is that the Tenant has not paid rent from April to August 2020. As this Application was made prior to July 31, 2020 for unpaid affected rent, as there was a valid repayment plan that was given to the Tenant, and as the Tenant has paid the first installment on October 1, 2020 as per the payment plan, I grant the Landlord a Monetary Order in the amount of **\$5,625.00**. This amount is calculated as \$1,250.00 for April 2020 rental arrears, \$1,250.00 for May 2020 rental arrears, \$1,250.00 for June 2020 rental arrears, \$1,250.00 for July 2020 rental arrears, and \$1,250.00 for August 2020 rental arrears, less \$625.00 for the first paid installment of the payment plan made on October 1, 2020.

However, this Order is set out such that the Tenant must pay the unpaid affected rent in accordance with the repayment plan. The Landlord's claims for the insufficient fund charges for the affected months of rent have been dismissed with leave to reapply.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$5,625.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. The Tenant must pay this unpaid affected rent in accordance with the repayment plan issued by the Landlord. 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 Landlord is also provided with a Monetary Order in the amount of **\$100.00** for the cost of the filing fee, 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: October 13, 2020

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Residential Tenancy Branch