



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL, MNDCL, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords under the Residential Tenancy Act (the “*Act*”), for a monetary order for unpaid rent or utilities, for a monetary order for damages, for a monetary order for monetary loss, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on June 18, 2020, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenants had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matter – Respondent Names Listed in Claim

After reviewing the tenancy agreement for this tenancy, I noted that only one of the parties listed as a respondent to the Landlord's claim was a signatory to this tenancy agreement.

Accordingly, I find that only the Tenant that can be held responsible for any award that may be issued as a result of this claim to be, I.K.K., as they are the only one to have signed the Tenancy agreement.

### Preliminary Matter – Withdrawal of Item

During the hearing, the Landlord requested to withdraw their claim for damages to the rental unit caused by the Tenant as they wish to increase the value of that claimed amount, and they did not have time to submit the required application to increased their claim before today's proceedings.

As the Tenant was not in attendance to object to the Landlord's request, I grant the Landlord request to withdraw their claim for damages to the rental unit from theses proceedings.

I will continue in these proceedings on the Landlord's remaining claims for unpaid rent and utilities, for monetary losses, and for the recovery of their filing fee for this hearing.

### Issues to be Decided

- Are the Landlords entitled to a monetary order for rent and utilities?
- Are the Landlords entitled to a monetary order for monetary loss?
- Are the Landlords entitled to retain the security deposit?
- Are the Landlords entitled to the return for their filing fee for this application?

### Background and Evidence

The tenancy agreement shows that the tenancy began on September 1, 2019, as a month to month tenancy. The Landlord testified that rent in the amount of \$2,450.00

was to be paid by the first day of each month and that the Tenant had paid a \$1,225.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the Tenant had not paid the rent for March, April, May and June 2020 in the amount of \$9,800.00. The Landlord is requesting a monetary order for the outstanding rent.

The Landlord testified that the Tenant has also not paid the utilities, in the amount of 1,202.89; consisting of \$469.78 in hydro, \$577.86 in gas, and \$155.25 in water. The Landlord is requesting a monetary order for the outstanding utilities for this tenancy. The Landlord submitted copies of the outstanding utility bills for this tenancy into documentary evidence.

The Landlord testified that they are also seeking to recover their legal fees for the previous proceedings they had with the Residential Tenancy Branch, to obtain an order of possession for this rental unit in the amount of \$1,106.00. The Landlord submitted a copy of the legal bill into documentary evidence.

### Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

#### ***Rules about payment and non-payment of rent***

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

*(a) seize any personal property of the tenant, or*

*(b) prevent or interfere with the tenant's access to the tenant's personal property.*

- (4) Subsection (3) (a) does not apply if*  
*(a) the landlord has a court order authorizing the action, or*  
*(b) the tenant has abandoned the rental unit and the landlord*  
*complies with the regulations.*

In this case, I accept the undisputed testimony of the Landlord that the rent for this tenancy has not been paid for March, April, May and June 2020. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

I also accept the undisputed testimony of the Landlord that the utilities for this tenancy have not been paid for this tenancy. I find that the Tenant breached section 26 of the *Act* when they did not pay the utilities as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$11,002.89, comprised of \$9800.00 in unpaid rent and \$1,202.89 in unpaid utilities. I grant permission to the Landlord to retain the security deposit for this tenancy in partial satisfaction of this award.

The Landlord has also claimed for compensation for Legal fees associated with their hearing with the Residential Tenancy Branch related to these proceedings to the Tenants. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process. Therefore, I dismiss the Landlord's claim to recover these legal fees.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$9,877.89, consisting of \$9,800.00 in unpaid rent, \$1,202.89 in unpaid utilities, \$100.00 in the recovery of the filing fee for this hearing, less the \$1,225.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlords under sections 26, 65 and 72 of the *Act*. I grant the Landlords a **Monetary Order** in the amount of **\$9,877.89**. The Landlords are provided with this 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: October 9, 2020

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Residential Tenancy Branch