



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNDCL-S, MNRL-S

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on June 23, 2020. The Landlord applied for a monetary order for unpaid rent, for a monetary order for compensation for damages and losses caused by the tenant, permission to retain the security deposit and to recover the filing fee paid for 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 Tenant 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 they served the Tenant with the Notice of Hearing and documentary evidence by email, on June 23, 2020, as permitted by Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the "Emergency Order"). A copy of the email was provided as evidence of service. Accordingly, I find that the Tenant 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.

### Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage and losses?
- Is the Landlord entitled to retain the security deposit for this tenancy?

### Background and Evidence

The tenancy agreement shows that the tenancy began on February 1, 2020, as a six-month fixed term tenancy. That rent in the amount of \$2,550.00 was to be paid by the first day of each month, and that the Landlord had been given a \$1,275.00 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 ended their tenancy early and moved out of the rental unit as of May 15, 2020.

The Landlord testified that the Tenant had not paid the rent for April and May 2020, in the amount of \$4,100.00, consisting of \$1,550.00 for April 2020 and \$2,550.00 for May 2020. The Landlord is requesting a monetary order for the outstanding rent.

The Landlord testified that they were not able to secure a new renter for the rental unit until July 1, 2020, and that due to the Tenant ending their tenancy early, they had lost a month's worth of rental income. The Landlord is requesting a monetary order for the lost rental income for June 2020, in the amount of \$2,550.00.

The Landlord testified that the rental unit had been returned to them damaged and uncleaned at the end of this tenancy. The Landlord testified that the Tenant had damaged the walls, requiring patching and touch up painting. That the Tenant had not cleaned the rental unit or returned the keys to the unit at the end of the tenant. The Landlord is requesting the recovery of their cost to have the rental unit repaired, cleaned and to have the locks changed, in the amount of \$308.41. The Landlord submitted a copy of the receipts for the cleaning and repair work into documentary evidence.

### Analysis

Based on the evidence before me, the testimony of the Landlord, 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 has not been paid for April and May 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.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$4,100.00, comprised of \$1,550.00 in rent for April 2020 and \$2,550.00 in rent for May 2020. I grant the Landlord permission to retain the security deposit they are holding for this tenancy in partial satisfaction of this award.

The Landlord has claimed for the loss of rental income for June 2020, in the amount of \$2,550.00, due to the Tenant ending this tenancy early. Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

***Tenant's notice***

***45(2)*** *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

I have reviewed the Tenancy agreement, and I find that the tenancy could not have ended in accordance with the *Act* until July 31, 2020. I find that the Tenant failed to comply with the *Act* when they ended their tenancy early and moved out of the rental unit on May 15, 2020.

I accept the Landlord's testimony that they attempted to rent the unit as soon as possible and that they were able to secure a new renter for the rental unit as of July 1, 2018. I also accept that the Landlord suffered a loss of rental income for one month, for June 2020. Therefore, I find the Landlord has established an entitlement and award of \$2,550.00 for the recovery of the loss of rental income for June 2020.

Regarding the Landlord's claim for compensation in the amount of \$308.41 for lock replacement, painting, and cleaning the rental unit at the end of this tenancy. I accept the testimony of the Landlord supported by their documentary evidence that the Tenant had returned the rental unit damaged and in an unclean state at the end of the tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

***Leaving the rental unit at the end of a tenancy***

***37 (2)*** *When a tenant vacates a rental unit, the tenant must*

*(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*

*(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I find that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlord damaged and uncleaned at the end of this tenancy. I also find that the

Landlord has provided sufficient documentary evidence to show the value of the loss they suffered due to the tenant breach of section 37 of the *Act*. Therefore, I award the Landlord the return of the requested costs to repair and clean the rental unit, in the amount of \$308.41.

Overall, I grant the Landlord a monetary order in the amount of \$5,683.41, consisting of \$4,100.00 in unpaid rent, \$2,550.00 in lost rental income, \$308.41 in compensation for damages and cleaning, less the \$1,275.00 that the Landlord is holding in a security deposit for this tenancy.

### Conclusion

I find for the Landlord pursuant to sections 26, 38, 45, 65 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$5,683.41**. 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 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 14, 2020

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Residential Tenancy Branch