



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

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

- a Monetary Order pursuant to section 67 of the *Act*.

Only the landlord and his counsel, K.H. attended the hearing. The landlord and counsel were given a full opportunity to be heard, to present affirmed testimony and to make submissions.

Counsel for the landlord explained that the landlord was provided with a substituted service order by an adjudicator with the Residential Tenancy Branch on October 9, 2020, after the tenant failed to provide the landlord with a forwarding address. Counsel stated the application for dispute resolution and evidentiary package were sent to the tenant via email as approved by substituted service. Pursuant to section 88(i) & 89(1)(e) of the *Act*, I find the tenant was duly served with the Notice of Hearing and the evidentiary package by substituted service.

### **Preliminary Issue – Order to be Served via email**

During the hearing counsel for the landlord requested an Order allowing the landlord to serve the decision and any Monetary Award granted via substituted service, specifically by email. The landlord said no forwarding address was provided to them following the conclusion of the tenancy. A review of evidence submitted by the tenant contains no forwarding address, and the tenant's act of submitting evidence to the dispute resolution portal has led me to conclude that the Notice of Hearing was received by the tenant.

Section 8.6 of the Rules of Procedure state, "If the arbitrator sets conditions for service of a decision or order, the decision or order will set those conditions out."

While Policy Guideline #12 states:

The party applying for substituted service must be able to demonstrate two things:

- that the party to be served cannot be served by any of the methods permitted under the Legislation, and
- that there is a reasonable expectation that the party being served will receive the documents by the method requested.

I find little evidence demonstrating that the landlord was in receipt of the tenant's forwarding address. I find the landlord's testimony to consistent and credible, and therefore, pursuant to Rule of Procedure 8.6 allow the landlord to serve the decision and any monetary award granted, via email.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

#### Background and Evidence

Undisputed testimony was provided by the landlord, along with submissions from his counsel explained this tenancy began on October 1, 2017 and ended by way of mutual agreement on September 23, 2020. Rent was \$2,450.00 per month and a security deposit of \$1,225.00 paid at the outset of the tenancy was surrendered to the landlord in writing upon the conclusion of the tenancy.

The landlord is seeking a monetary award of \$14,659.98 representing unpaid rent for January, May (partial), June, July, August and September 2020, damage to the property and strata bylaw violations. In addition the landlord sought \$200.00 in miscellaneous charges. As part of the evidentiary package the tenant provided several invoices demonstrating the amounts paid to repair various items in the rental suite, along with a copy of the condition inspection report and photos showing damage to the property. The landlord described the property as being in "good" condition, saying it was last painted in approximately May 2017, while noting the carpet was original from 2005.

#### Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results."

Based on the undisputed testimony presented at the hearing, I find that rent remains unpaid for the dates listed on the Monetary Order worksheet dated October 5, 2020. Pursuant to section 7 of the Act, I find the landlord may recover the entire amount sought in their application for unpaid rent. While I note a re-payment plan was agreed to by the parties, the tenant vacated the property prior to its effective date of October 1, 2020.

In addition to the landlord's application for unpaid rent, the landlord applied for compensation related to Strata fines and repairs to the carpet and walls. *Residential Tenancy Policy Guideline #16* examines the criteria for awarding compensation. It states as follows, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence that compensation is due." This *Guideline* continues by explaining, "In order to determine whether compensation is due, the arbitrator may determine whether: a party to the tenancy agreement failed to comply with the *Act*, regulations or tenancy agreement, loss or damage has resulted from this non-compliance, the party who suffered the damage or loss can prove the amount of or value of the damage, and the party who has suffered the damage has acted reasonably to minimize that damage or loss."

After having reviewed the evidentiary package supplied by the landlord, and having considered the undisputed oral testimony, I find the landlord has sufficiently demonstrated loss under the *Act*. The landlord produced receipts showing the expenses he incurred bringing the rental unit to an adequate state following the tenant's departure along with and the Strata fines incurred. I find the tenants damaged the property beyond what could be considered "normal wear and tear" in relation to the walls. I decline to award the landlord any amount sought for repairs to the carpet, as I note they were beyond their "useful" life as defined by *Policy Guideline #40* related to carpets. I award the landlord the entire amount sought for repairs to the walls damaged during the tenancy and for the Strata fines. I find the landlord was able to show loss under the *Act*, along with the amount of or value of the damage.

### Conclusion

Pursuant to section 88 & 89 of the *Act* and Rule of Procedure 8.6, I issue an Order allowing the landlord to serve this decision and Monetary Award to the tenant via email.

I issue a Monetary Order of \$15,276.65 in favour of the landlord as follows:

<b>Item</b>	<b>Amount</b>
Unpaid Rent January 2020	\$2,450.00
Unpaid Rent May 2020	1,200.00
Unpaid Rent June through September 2020 (4 x 2,450.00)	9,800.00
Strata fines	400.00
Painting	1,426.65
<b>Total =</b>	<b>\$15,276.65</b>

The landlord is provided with a Monetary 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: November 12, 2020

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Residential Tenancy Branch