



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*;
- to retain the tenants’ security and pet deposits pursuant to section 38; and
- a return of the filing fee pursuant to section 72.

Both tenants and the landlord attended the hearing by way of teleconference. All parties present were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenants confirmed receipt of the landlord’s application for dispute but stated they had not received any of the landlord’s evidence. Both parties stated they had not received the evidentiary packages of the other. Both parties acknowledged sending their evidence to the other by way of email. I find that the tenants were duly served with the Notice of Hearing pursuant to section 88 of the *Act*. I find both the landlord and the tenants failed to serve their evidentiary packages in accordance with section 89 of the *Act*. Email is not a valid form of service unless it is approved prior to the hearing through a substituted service application. I find no evidence that either party had applied for substituted service to serve their evidence via email and therefore decline any of the evidence uploaded.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary award? Can the landlord recover the filing fee?  
Can the landlord retain the tenants’ security deposit?

### Background and Evidence

This tenancy began in December 2019 and ended on August 27, 2020. Rent was \$1,050.00 per month and a deposit of \$1,050.00 (pet and security) was collected at the outset of the tenancy and continues to be held by the landlord.

The landlord is seeking a monetary award of \$3,658.00 as follows:

ITEM	AMOUNT
Unpaid Rent ½ of month	\$525.00
Unpaid Rent full month	1,050.00
Cleaning	340.00
Unpaid Hydro	143.00
Repair to floor (estimate)	1,500.00
Filing Fee	100.00
<b>TOTAL =</b>	<b>\$3,658.00</b>

During the hearing the landlord stated she wished to recover unpaid rent for July and August 2020, along with cleaning that was required in the property following the tenants' departure from the unit. In addition, the landlord alleged the tenants had failed to pay their final hydro bill. The final portion of the landlord's application concerned replacement of a laminate floor that she argued was damaged during the tenancy. The landlord did not know the age of the floor but said it "looked new" when she rented out the unit.

The tenants acknowledged the rent and hydro bill remained unpaid but argued they should not be under an obligation to pay rent because of an issue in the unit with a broken sewage pump. The tenants detailed issues with the property related to numerous sewage backs-ups. They said these issues led them to vacate the property after the landlord allegedly failed to attend to their complaints related to this problem. In addition, the tenants detailed some financial hardships they had during the tenancy which prevented them from meeting their obligations related to the hydro bill.

The tenants disputed any damage related to the floor and disputed the expenses related to cleaning. The tenants said they had led the property in a clean state and noted assistance they received from family members to clean the home. The tenants argued the flooring was damaged at the outset of their tenancy and allegedly brought this damage to the landlord's attention when they entered the tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord has applied for a monetary award of \$3,658.50. A close calculation of their application as noted on page 2 shows the true number to be \$3,658.50.

During the hearing, the tenants acknowledged not paying rent for the months cited by the landlord but argued that rent should not due, because of the poor state of the rental unit, specifically sewage backups.

Section 26 of the *Act* states as follows, “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.” While section 46(6) notes that a landlord may treat unpaid utilities as unpaid rent. I find the tenant had no right to withhold rent. No evidence was presented that the tenants received an order from an arbitrator with the RTB to withhold any portion of the rent, nor was any evidence presented that the tenant had applied to withhold rent. I therefore order the tenants to pay unpaid rent of \$1,575.00 representing the amounts due for July and August 2020, along with the unpaid utilities of \$143.00.

I find the landlord has failed to provide sufficient evidence in support of the remainder of their claim. As noted previously, the landlord failed to adequately serve the tenants with any evidence they intended to rely on. I therefore declined to consider any evidence other than oral testimony. I find the landlord was unable to provide any significant detail of the expenses related to cleaning or the damage of the floor and the state of the floor prior to the tenancy. For these reasons, I decline to award the landlord any further monetary award.

As the landlord was partially successful in her application, she may recover the \$100.00 filing fee pursuant to section 72 of the *Act*. Under this same section, I allow the landlord

to retain the tenants' pet and security deposit in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order in the landlord favour in the amount of \$768.00 as follows:

Item	Amount
Partial unpaid rent July 2020	\$525.00
Unpaid rent for August 2020	1,050.00
Unpaid Hydro Bill	143.00
Return of Filing Fee	100.00
Less security and pet deposit	(-1,050.00)
<b>Total =</b>	<b>\$768.00</b>

The landlord is provided with these Orders in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 21, 2020

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Residential Tenancy Branch