



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL-S**

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- - A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
  - Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.

The parties attended, had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process. No issues of service were raised.

### *Preliminary Issue*

The landlord requested an amendment to the landlord’s application to change the monetary award requested to \$10,250.00, a reduction of one month’s rent.

The landlord clarified the claim as follows:

ITEM	AMOUNT
Outstanding rent to August 31, 2020	\$10,250.00
(Less security deposit)	(\$1,375.00)
<b>MONETARY AWARD REQUESTED</b>	<b>\$8,875.00</b>

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to reduce the requested claim for outstanding rent to the amount of \$10,250.00.

#### Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony as the tenant did not attend the hearing.

This tenancy began on June 1, 2017. Monthly rent in the amount of \$2,870.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties. The landlord submitted a copy of the agreement.

A security deposit of \$1,375.00 was paid by the tenant to the landlord which the landlord holds. The tenant agreed that the security deposit could be applied by the landlord to outstanding rent.

The tenant did not provide any notice to the landlord and moved out of the unit on August 4, 2020. The landlord claimed outstanding rent in the total amount of \$10,250.00 to the end of August 2020. The landlord brought these proceedings on August 06, 2020.

The landlord submitted a Monetary Order Worksheet. The tenant acknowledged that the tenant owed outstanding rent in the amount claimed. However, the tenant claimed that he incurred substantial financial losses during the pandemic, that he made best efforts to pay the rent, and that it was unfair that the landlord obtains a monetary order against him.

The landlord requested an order authorizing the landlord to apply the security deposit to the outstanding rent and reimbursement of the filing fee. The landlord requested a Monetary Order as follows:

ITEM	AMOUNT
Outstanding rent to August 31, 2020	\$10,250.00
(Less security deposit)	(\$1,375.00)
<b>MONETARY AWARD REQUESTED</b>	<b>\$8,875.00</b>

#### - Analysis

I have reviewed all documentary evidence and testimony.

Section 26(1) of the *Act* establishes that “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.”

The Act states:

#### ***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.*

I find the tenant did not pay the overdue rent and that rent to August 31, 2020 in the amount of \$10,250.00 is owing the landlord. I accept the landlord's evidence in this regard; the tenant acknowledged the amount is correct and claimed that it was "unfair" that an award be made against him in this amount.

Section 7 of the Act imposes an obligation on the landlord to do whatever is reasonable to minimize the damage or loss, stating in part:

***Liability for not complying with this Act or a tenancy agreement***

***7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. (emphasis added)***

The parties agreed the tenant moved out without notice on August 4, 2020. I accept the landlord's evidence that he was taken by surprise, and attempted to rent the unit as soon as possible. Nevertheless the unit was vacant for the rest of August and September 2020.

I acknowledge the tenant's assertion that circumstances beyond his control contributed to financial loss and inability to pay the rent when it fell due. However, I find the assertion that the landlord's application is "unfair" does not absolve the tenant of the responsibility to provide notice and pay rent owing under the agreement and the Act.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a monetary award pursuant to section 67 in the amount of \$10,250.00 unpaid rent.

Pursuant to section 72, I authorize the landlord to retain the security deposit in partial satisfaction of the monetary award.

In conclusion, I grant the landlord a monetary award in the amount of **\$8,875.00** calculated as follows:

ITEM	AMOUNT
Outstanding rent to August 31, 2020	\$10,250.00

(Less security deposit)	(\$1,375.00)
<b>MONETARY AWARD</b>	<b>\$8,875.00</b>

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Conclusion.

I grant the landlord a monetary award in the amount of **\$8,875.00**

This order must be served on the tenant. If the tenant fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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 27, 2020

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Residential Tenancy Branch