



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Performance Power Play Realty  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNRL-S, FFL

### Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant called witness S.O. who affirmed to tell the truth. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and the agent's witness and I were the only ones who had called into this teleconference.

The agent testified that the landlord's application for dispute resolution was left at the tenant's door on September 14, 2020 in the presence of witness S.O. Witness S.O. testified that she witnessed the agent leave the landlord's application for dispute resolution at the tenant's door on September 14, 2020. The agent testified that he spoke with the tenant over the phone later in the day on September 14, 2020 and the tenant confirmed that he received the landlord's application for dispute resolution. I find that the tenant was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, 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 agent and witness S.O., not all details of their respective submissions are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The agent entered into evidence a tenancy agreement signed by both parties which states that:

- this tenancy began on September 1, 2019;
- monthly rent in the amount of \$2,200.00 is payable on the first day of each month; and
- a security deposit of \$1,100.00 was paid by the tenant to the landlord.

The agent testified that the tenant moved out of the subject rental property sometime between the end of September 2020 and October 3, 2020. The agent testified that the tenant did not provide the landlord with his forwarding address.

The agent testified that the tenant did not pay rent from April to September 2020. A tenant ledger stating same was entered into evidence. The agent testified that the landlord is seeking a monetary award of \$13,200.00 in unpaid rent.

### Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,200.00 on the first day of each month. Based on the testimony of the

agent and the ledger entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$13,200.00 in unpaid rent from April to September 2020.

I accept the agent's undisputed testimony that the tenant did not provide his forwarding address to the landlord.

Section 38(1) of the *Act* states:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that since the landlord did not receive the tenant's forwarding address, the landlord was not required to return the security deposit to the tenant.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,100.00 in part satisfaction of the landlord's monetary claim for unpaid rent against the tenant.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid rent	\$13,200.00
Filing Fee	\$100.00
Less security deposit	-\$1,100.00
<b>TOTAL</b>	<b>\$12,200.00</b>

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: December 17, 2020

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Residential Tenancy Branch