



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$1,440.00; and a monetary order for damages in the amount of \$237.50, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on August 29, 2020. The Landlord provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

### Preliminary and Procedural Matters

The Landlord provided her email address in the Application, and confirmed it at the start of the hearing. She also confirmed her understanding that the Decision would be emailed to her and mailed to the Tenant, and that any Orders would be sent to the appropriate Party.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Landlord said that the Tenant moved in on March 19, 2020, and she confirmed the evidence in the tenancy agreement, which indicates that the Tenant paid her a monthly rent of \$850.00, due on the first day of each month. The Landlord said that the Tenant paid her a security deposit of \$425.00, which the Landlord still holds, and no pet damage deposit. The Landlord said that the Tenant vacated the rental unit on August 16, 2020, and that she wrote her forwarding address on the condition inspection report.

The Landlord said that the Tenant failed to pay rent in August and, therefore owes her \$850.00. The Landlord submitted a text communication between the Parties, in which the Tenant said that she had unexpected medical expenses, and she said:

...so I will take the eviction notice and move out... Obviously keep the damage deposit otherwise I cannot pay rent till mid.month and I know that will not work for you so I will just take the eviction. Either or way I would of moved out by the end of this month anyway.

The Landlord has made the following claims in her Application:

	For	Amount
1	August and September rent	\$1,700.00
2	Utilities – August 16 to 31 <sup>st</sup>	\$55.00
3	Utilities - September	\$110.00
4	3½ hours mowing... @ \$25/hr	\$87.50

5	Damage to mower – lost bag	\$150.00
5	RTB Application filing fee	\$100.00
6	<b>Sub-total</b>	2,202.50
7	Less security deposit	\$425.00
	<b>Total monetary order claim</b>	<b>\$1,787.50</b>

The Landlord said:

[The Tenant] hadn't paid her rent on time for the third time. I texted her on August 2<sup>nd</sup> in the evening, and she's giving me a story about how she's sick,... it's a different story every time. She didn't give notice, but she said she's leaving and not paying her rent. No notice. The rent is \$850.00 for August, and utilities are included in the lease at \$110.00 per month for utilities. She owes me \$65.00 for utilities until the 15<sup>th</sup>. And she owes me September rent and utilities.

The Landlord said: "See the first page of the tenancy agreement in the top right corner – the \$110.00 is for utilities." The tenancy agreement does have a notation that the Tenant will pay the Landlord \$110.00 extra each month for utilities. The second page of the tenancy agreement also indicates that water, electricity, and heat are not included in the rent.

The Landlord also said that the Tenant was required to mow the lawn; however, when she tried to do so, she lit the lawn mower on fire. The Landlord said:

[The Tenant] said she didn't know how to use it, but she didn't ask. It was a nice, new lawn mower that cost over \$300.00. And the bag's gone; it's worth half the cost of the lawn mower.

It was a brand-new lawn mower, but it doesn't have a bag any more. The handyman gave it a tune up. It looks 100 years old now. I'm claiming \$150.00 for the missing bag, as it's half the price of the lawn mower. I had Al look at it. I paid him \$35.00 an hour – it's half dead and there's no bag on it – that's half a lawn mower expense. And I had him mow the lawn for 3½ hours at \$25.00 per hour, that's \$87.00, for mowing, bagging, hauling out grass, and cleaning, and a bit of recycling the bin of grass.

Written on the bottom of the tenancy agreement above the execution portion of the

document, it states: "Tenants responsible for snow removal and lawn care." The Parties' initials were beside this statement.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Further, according to section 45(1) of the Act, a tenant may end a periodic tenancy by giving the landlord notice that the effective date of the end of the tenancy is:

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

(b) 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.

...

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Accordingly, by giving notice of the end of the tenancy by in August 2020, the effective date for this notice should have been September 30, 2020.

Further, according to sections 45 and 52 of the Act, in order for a notice to end tenancy from a tenant to be effective, the form and content must be in writing and must:

- a) Be signed and dated by the Party giving the notice,
- b) Give the address of the rental unit,
- c) State the effective date of the Notice.

In this case, I find that the Tenant was required to give the Landlord notice pursuant to section 45 of the Act, meaning the effective vacancy date should have been September

30, 2020. I, therefore, find that the Tenant owed the Landlord rent for August and September 2020, for a total of \$1,700.00. I award the Landlord **\$1,700.00** from the Tenant in unpaid rent, pursuant to sections 26, 45 and 67.

Section 46(6) of the Act states:

**46 (6) If**

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Landlord did not provide me with any evidence that she gave the Tenant a written demand for the payment of utilities. Accordingly, I find that the Landlord may not treat the utility charges as unpaid rent. I therefore, dismiss the Landlord's claim for unpaid utilities from the Tenant without leave to reapply.

Before the Landlord testified, I advised her of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

I find that the Tenant was responsible for mowing the lawn during the tenancy, and I find from the undisputed evidence before me that the Tenant did not do this work at the end of the tenancy. I, therefore, find that the Landlord is eligible for compensation for having to have the lawn mowed. As such, I award the Landlord with **\$87.50** from the Tenant for lawn mowing.

Based on the undisputed evidence before me, I find that it is more likely than not that the Tenant was responsible for the lawn mower bag being missing. Section 37 of the Act states that a tenant must leave the rental unit undamaged, except for reasonable wear and tear. I find that the Tenant caused damage to the lawn mower, including being responsible for the missing lawn mower bag. However, I find that the Landlord failed the third step of the test to establish the value of the bag. I find the Landlord failed to provide sufficient evidence of what a new lawn mower bag costs, and therefore, I find the Landlord has failed the third step of the test. I, therefore, dismiss this claim without leave to reapply.

The Application filing fee is something that arbitrator's award, based generally on the applicant's success with their claims. I address this below.

### Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$425.00 in partial satisfaction of the Landlord's monetary claim. I also award the Landlord with recovery of the \$100.00 Application filing fee, given her success in her claims, pursuant to section 72 of the Act.

	<b>For</b>	<b>Amount Awarded</b>
1	August and September rent	\$1,700.00
2	Utilities – August 16 to 31 <sup>st</sup>	\$0.00
3	Utilities - September	\$0.00
4	3½ hours mowing... @ \$25/hr	\$87.50
5	Damage to mower – lost bag	\$0.00
6	RTB Application filing fee	\$100.00
	<b>Sub-total</b>	1,887.50
	Less security deposit	\$425.00
	<b>Total monetary order claim</b>	<b>\$1,462.50</b>

The Landlord is successful in her claims in the amount of \$1,887.50. The Landlord is authorized to retain the Tenant's \$425.00 security deposit in partial satisfaction of this

claim. The Landlord is granted a Monetary Order for the difference in the amount of **\$1,465.50** from the Tenant.

Conclusion

The Landlord is successful in her claims for compensation from the Tenant in a monetary award of \$1,887.50, including recovery of the \$100.00 Application filing fee.

The Landlord is authorized to retain the Tenant's \$425.00 security deposit in partial satisfaction of the monetary award. I grant the Landlord a Monetary Order of **\$1,462.50** for the remaining balance owing from the Tenant.

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 21, 2020

---

Residential Tenancy Branch