



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security and pet damage 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 which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent on September 11, 2020 to the forwarding address provided by the tenant. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on September 16, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*. I note that pursuant to Residential Tenancy Policy Guideline 12 the refusal of a party to accept or pick up registered mail does not override the deeming provisions.

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

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposits for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

The landlord provided undisputed testimony on the following facts. This fixed-term tenancy began in September, 2019. Monthly rent was \$1,750.00 payable on the first of each month. A security deposit of \$875.00 and pet damage deposit of \$875.00 were collected at the start of the tenancy and are still held by the landlord.

The tenant abandoned the rental unit sometime in July, 2020 without paying rent for that month and providing no notice to the landlord. The landlord submits that there was a rental arrear of \$1,750.00 for the month of July, 2020.

The landlord managed to find a new occupant for the rental unit as of August 10, 2020 but incurred rental income losses in the amount of \$525.00 for that month. In addition, the landlord submits that the tenant failed to pay utilities for the rental unit and the landlord was charged \$378.68 for the unpaid bills by the utility providers. The landlord submitted invoices to demonstrate the losses.

The landlord submits that they incurred costs of \$170.00 for cleaning and disposing of the garbage left in the rental suite. The landlord submitted some photographs of the rental suite condition as evidence in support of their claim.

### 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.

I accept that there was an enforceable tenancy agreement under which the tenant was obligated to pay rent in the amount of \$1,750.00 each month. I accept the evidence that the tenant failed to pay as required and there was a rental arrear of \$1,750.00 for the month of July, 2020.

While the rental arrear arises from unpaid affected rent as defined in the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation, as expanded upon in Residential Tenancy Policy Guideline 52:

If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

I accept the evidence of the landlord that the tenancy has ended and issue a monetary order in the landlord's favor in the amount of \$1,750.00 as at the date of the hearing.

I accept the evidence of the landlord that the tenant vacated the rental unit without providing sufficient notice under the Act and the landlord incurred some rental income loss despite their best effort to mitigate their losses. I accept that the landlord incurred a rental income loss of \$525.00 and issue a monetary award in that amount accordingly.

I further accept that the tenant failed to pay utilities for the rental unit and the outstanding charges were borne by the landlord. I accept that the amount of the utility charges were \$378.68.

I am satisfied with the landlord's evidence that they incurred costs for cleaning and garbage disposal due to the state of the rental unit left by the tenant. I find that the landlord has provided sufficient evidence by way of their testimony, written correspondence and photographs and accept that the total cost of all losses is \$170.00. I issue a monetary award in that amount accordingly.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,173.68 on the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid Rent	\$1,750.00
Rental Income Loss	\$525.00
Cleaning and Garbage Disposal	\$170.00
Unpaid Utilities	\$378.68
Filing Fees	\$100.00
Less Security Deposit	-\$575.00
Less Pet Damage Deposit	-\$575.00
<b>TOTAL</b>	<b>\$1,173.68</b>

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 14, 2020

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Residential Tenancy Branch