



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### **Introduction**

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$5,375 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:57 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 landlord and I were the only ones who had called into this teleconference.

The landlord testified he served that the tenant with the following documents via registered mail:

- 1) notice of dispute resolution form on September 2, 2020;
- 2) the supporting evidence package on September 18, 2020; and
- 3) an amendment to the application on December 7, 2020.

The landlord provided Canada Post tracking numbers confirming these mailing which are reproduced on the cover of this decision. I find that the tenant has been served with these documents in accordance with the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$5,375;
- 2) recover the filing fee; and
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is a one-bedroom furnished apartment located on a university campus. Prior to the start of the 2020/2021 academic year, the landlord advertised the rental unit for rent and received applications from several interested parties. The landlord selected the tenant ANW and her son JW from among these applicants. He prepared a tenancy agreement listing both ANW and JW as tenants and sent it to ANW. I understand that JW was to reside in the rental unit while he attended university. The tenancy was to be for a fixed term of one year, starting September 1, 2020. Monthly rent was \$2,100, payable on the first of each month. A security deposit of \$1,050 was required, which ANW paid, and the landlord continues to hold in trust.

On August 16, 2020 ANW returned the tenancy agreement to the landlord having signed it. The landlord testified that, at this time, she indicated that JW would also be signing the tenancy agreement.

However, shortly thereafter ANW advised the landlord that JW no longer wanted to sign the tenancy agreement, as he did not want to have that liability associated with himself. ANW told the landlord that the tenancy agreement is still valid because she had signed it and that this should not be a problem.

The landlord testified that he still wanted JW's signature on the tenancy agreement for insurance purposes. This never occurred. Despite the absence of JW's signature ANW persisted in her position that the tenancy could proceed. The landlord did not accede to this and continued to demand that JW sign the tenancy agreement.

The landlord and ANW had the following email exchange in late August 2020:

ANW: So I understand your concern. And I apologize for the scattered was of all this. But the fact remains we have a lease. Your rent will be paid in full on time every month. Just let's get [JW] moved in on August 29 as planned. I will send money tomorrow.

Landlord: And the ID please.

ANW: He has never signed. I know it sounds weird but he is nervous about it when he doesn't have the income as a student. My friend who is a lawyer is going to reassure him.

Landlord: That worry will need to resolve itself by the 29th. Nothing will move forward without his signature.

ANW: He just feels that he won't have the income to cover it also he shouldn't sign a form that says he does.

On September 1, 2020, the landlord texted ANW demanding payment of the rent, which ANW assured would be paid. She also indicated that she would pick up the keys on September 3, 2020. The landlord also asked for JW's signature again, to which ANW replied "it is coming".

On September 2, 2020, the landlord indicated that since rent had not been paid on time, a late fee of \$25 would be imposed, to which ANW replied "fair enough."

On September 2, 2020, the landlord prepared a 10 day notice to end tenancy for nonpayment of rent and sent it to the tenant via registered mail. ANW did not apply to dispute this notice. The landlord testified that he did not obtain an order of possession for the rental unit as the tenant had not retrieved the keys from him and had never taken possession of it, so an order of possession was not necessary.

On September 3, 2020 ANW indicated to the landlord that she would be paying rent that day, but that she would not be picking up the keys that day anymore.

The landlord testified that ANW never paid rent in the rental unit and never retrieved the keys from him. As such, he started to look for a new tenant. He testified that he attempted to re-rent the rental unit in late September 2020. He testified that he posted the rental unit for rent on Facebook, Craigslist, and Rentals.ca, but that he had a great deal of difficulty securing a new tenant because rental units located on university campuses typically rent at the start of the academic year for a term of one year. Despite this, he testified that he secured a new tenant as of November 15, 2020. This new tenant's term of occupancy is only two months and ends on January 15, 2021, and he has not secured a new tenant following this date.

On September 22, 2020 the tenant ANW emailed the landlord indicating that she did not think it would be a good idea for him to re-rent the rental unit until they had finished with arbitration. (The tenant filed an application for a tenant's order of possession which came to a hearing on November 18, 2020. The tenant did not attend that hearing and her application was dismissed without leave to reapply).

In the September 22, 2020 email, ANW wrote that the landlord "misled [her and JW that] he could not move in without signing, demanding rent and then trying to evict us for not paying rent" she continued that she had offered to pay rent to move in.

The tenant filed an application for a tenant's order of possession which came to a hearing on November 18, 2020. The tenant did not attend that hearing and her application was dismissed without leave to reapply.

The landlord testified that he did not want to continue the tenancy (and take ANW and JW as tenants for October 2020) as ANW failed to pay the rent when it was owed, JW refused to sign the tenancy agreement, and because he testified that ANW told him that she was bankrupt and that he was unsure if she would be able to pay the monthly rent (no evidence was entered to support this last claim).

The landlord seeks a monetary order for \$5,275, representing one month's unpaid rent (\$2,100), a fee for late rent provided for in an addendum to the tenancy agreement (\$25), and compensation for lost rent between October 1, 2020 to November 15, 2020 (\$3,150).

### **Analysis**

Contrary to the assertion of ANW in her email of September 22, 2020, it is not sufficient for her alone to have signed the tenancy agreement. In the abstract, it certainly is permissible for one occupant of a rental unit to be named on the tenancy agreement, thus shielding a second occupant from any liability that may arise as a result of a breach of the tenancy agreement by the occupants. However, in such circumstances the landlord must agree to this arrangement.

In the present circumstances, the landlord was clear (as can be seen from his text messages) that he required JW to sign the tenancy agreement as well as ANW. As such, JW's failure to sign the tenancy agreement caused the tenancy agreement to not be completed. Furthermore, on at least one occasion ANW represented to the landlord that JW would sign the tenancy agreement. On the evidence before me, I cannot find that the landlord attempted to ambush ANW and JW and with the requirement that JW sign the tenancy agreement. Rather, I find it more likely than not that after putting it in offer to rent the rental unit JW changed his mind as to putting his name on the tenancy agreement.

Accordingly, I do not find that a valid tenancy agreement exists between ANW and the landlord. The tenancy agreement requires that JW be listed as a tenant and that JW sign the tenancy agreement confirming the fact that JW is indeed a tenant (and therefore subject to liability under the Act). His refusal to sign the tenancy agreement indicates that he did not wish that such an agreement exist. As such, the tenancy agreement is only partially executed (by ANW in her own capacity and by the landlord).

However just because a valid tenancy agreement does not exist between the parties does not mean that the Act does not apply to this dispute.

Section 1 of the Act states:

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

In these specific circumstances I find that the context requires that ANW be considered a tenant for the purposes of this Act; she is a "prospective" tenant.

I find that, by offering to rent the rental unit for \$2,100 a month for a period of one year and by signing the tenancy agreement provided to her by the landlord, ANW led the landlord to believe that the rental unit would be rented it on those terms. Furthermore, by representing to the landlord that JW would sign the tenancy agreement, that she would pay September's rent, and that she would pick up the keys to the rental unit in the face of the landlords unwavering requirement that JW signed the tenancy agreement, ANW represented to the landlord that the tenancy agreement would be completed on the terms he required (that is, that JW would sign the tenancy agreement).

I find that the landlord relied on this representation and operated on the assumption that JW would move into the rental unit, would pay monthly rent as required, and would sign the tenancy agreement.

None of these things occurred.

I find that by breaching these representations, ANW caused the landlord to suffer monetary loss equal to 2.5 months' rent (September 1 to November 15, 2020). The landlord could not generate income from the rental unit for this period of time that he otherwise would have were it not for ANW's breach.

I find that had ANW not represented to the landlord that JW would sign the tenancy agreement, the landlord could have sought in alternate render prior to the start of the academic year.

I find that the landlord acted reasonably to attempt to secure new tenants for the rental unit. I accept that he faced increased difficulty in securing a new tenant due to the fact that the start of the academic year had passed, and that most prospective renters of a rental unit located on a university campus would be looking to start renting prior to the start of the academic year.

Accordingly, I order that tenant ANW pay the landlord \$5,250, representing compensation for the loss of rent due to JW and ANW's refusal to complete the tenancy agreement. I note that, as the tenancy agreement was never completed, September rent never became due and owing, and as such was not late. Accordingly, the \$25 late fee is not recoverable.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

**Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that tenant ANW pay the landlord \$4,300, representing the following:

Loss of Rent (Sept 1 to Nov 15)	\$5,250
Filing Fee	\$100
Security deposit credit	-\$1,050
<b>Total</b>	<b>\$4,300</b>

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: January 5, 2021

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Residential Tenancy Branch