



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL, MNRL, MNDL, MNDCL

### **Introduction**

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

- a monetary order for unpaid rent and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and amended claim. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlord's application and amendment. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

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

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

This tenancy began as a fixed-term tenancy on November 1, 2019, and ended on September 14, 2020. Monthly rent was set at \$2,000.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,000.00, which the landlord still holds.

The landlord is requesting a monetary order for the following items:

Unpaid Rent April 2020 – September 2020	\$2,000.00
Fee to replace parking pass	35.00
Damage	(no amount provided)
<b>Total Monetary Award Requested</b>	<b>\$2,035.00</b>

The landlord testified that after discussing with the tenant both of their financial situations in March 2020, both parties had agreed on a temporary payment schedule to ensure that the landlord would be able to continue her mortgage and strata payments while accommodating the tenant's financial challenges due to the pandemic. The landlord provided a payment schedule, which shows that the tenant made partial payments from April to September 2020, when the tenant moved out. The landlord testified that the tenant still owes her \$2,000.00 in arrears for the period up to September 2020.

The tenant testified that she understood the payment plan to be a permanent rent reduction by the landlord. The tenant testified that the landlord never made any reference or mention of repaying the arrears, and that she interpreted the candidness in the landlord's calculations and costs as the landlord's genuine offer to help the tenant out in this difficult time. The tenant testified that the landlord did not request the \$2,000.00 from her until the end of the tenancy, and she was shocked at this.

The landlord also requested \$35.00, which is the replacement fee for the parking pass that was not returned. The tenant testified in the hearing that she was not disputing this portion of the claim.

The landlord noted in her application that she was seeking compensation for damages to the rental unit, but did not provide a monetary breakdown or summary of these losses.

### **Analysis**

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. Although the landlord referenced a monetary claim for damages and losses, I find that the landlord did not provide a clear breakdown of this portion of her claim. As a matter of natural justice and fairness, the respondent must know the case against them. In this case I find that the landlord failed to provide a clear breakdown of the specific amount(s) and corresponding details of the requested monetary order. Accordingly, I dismiss the landlord's application for monetary

compensation related to damages with leave to reapply. Liberty to reapply is not an extension of any applicable limitation period.

As the tenant is not disputing the \$35.00 claim for the parking pass, I allow the landlord a monetary order for this amount.

**Section 26** of the Act, in part, states the following about payment of rent:

***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 have reviewed the documentary evidence submitted for this hearing, as well as the testimony provided by both parties. Although it is clear that the tenant was allowed to make partial rent payments for the period of April 2020 through to September 2020, whether the difference was supposed to be repaid was not referenced in the evidence provided. I find that in light of the disputed testimony, I accept the landlord's testimony that she had tried to accommodate the tenant during a time of financial hardship for both parties. I find that the evidence does not support that the landlord had agreed to give the tenant a rent reduction.

I find that the evidence shows that the landlord did provide some kind of accommodation for rent payments in the form of a payment schedule, which allowed the landlord to make the minimum payments to cover her expenses, while allowing the tenancy to continue for both parties. I find that that the monthly rent was set at \$2,000.00 per month for this tenancy as noted in the tenancy agreement, and although the tenant was allowed to make partial rent payments towards that amount, the monthly rent still remained the same. I do not find the partial rent payments or schedule to constitute an implied deduction in rent. Accordingly, I find that the tenant owed \$2,000.00 in outstanding rent for this tenancy, and I allow the landlord a monetary order for that amount.

As the landlord's application had merit, I allow the landlord to recover the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$1,000.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

**Conclusion**

I issue a Monetary Order in the amount of \$1,135.00 in the landlord's favour as set out in the table below. I allow the landlord to retain the tenant's security deposit in partial satisfaction of their monetary claim. The landlord's monetary claim for damage is dismissed with leave to reapply.

Unpaid Rent April 2020 – September 2020	\$2,000.00
Fee to replace parking pass	35.00
Filing Fee	100.00
Less Security Deposit Held	-1,000.00
<b>Total Monetary Award</b>	<b>\$1,135.00</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: January 13, 2021

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Residential Tenancy Branch