



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on January 15, 2021 by way of conference call concerning an amended application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Application for Dispute Resolution, notice of this hearing and evidentiary material (the Hearing Package) by registered mail on October 30, 2020 and has provided copies of a Registered Domestic Customer Receipt and a tracking print-out from Canada Post. I am satisfied that the tenant has been served with the Hearing Package in accordance with the *Residential Tenancy Act*.

### Issues to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for Court fees, Court Bailiff fees, loss of rental revenue and advertising costs?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on July 1, 2020 and was to revert to a month-to-month tenancy after June 30, 2021. However, the tenant vacated the rental unit on December 4, 2020, with the assistance of a Court Bailiff. The landlord received a Writ of Possession that date.

Rent in the amount of \$1,800.00 was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a high-rise building, and a copy of the tenancy agreement has been provided as evidence for this hearing.

A move-in condition inspection report was completed at the beginning of the tenancy, and a copy has been provided for this hearing. At move-out, the tenant was not present for the inspection; the tenant said he was moving out on November 30, 2020, and the day prior the landlord and the landlord's agent attempted to schedule the inspection. They went to the rental unit and could hear the tenant inside but he wouldn't answer the door. The landlord's agent asked about scheduling the move-out condition inspection, through the door, but the tenant didn't respond.

On November 4, 2020 the landlord was successful in obtaining an Order of Possession and a monetary order for the unpaid rent for October, 2020, but due to the pandemic, could not claim arrears for July or August.

On December 4, 2020 the landlord's agent attended the rental unit when the Bailiff was there, but the tenant was not there. It took movers 3 or 4 hours to get everything out of the rental unit, and the tenant did not return. The tenant had packed most of his things in boxes and some furniture was gone, so he was making gestures toward moving but was not finished. The Bailiff said that there was nothing of value except perhaps the tenant's bike. The landlord's agent completed the move-out condition inspection report on December 4, 2020.

The Bailiff had everything put in storage and contacted the tenant. Items were stored for 30 days, but the tenant didn't collect any of it. Early in January, 2021 the items were taken to the landfill.

The landlord has provided a Monetary Order Worksheet setting out the following claims totaling \$9,129.70:

- \$3,900.00 for unpaid rent from July 1, 2020 to December, 2020;
- \$2,052.50 for loss of rental income and advertising;
- \$2,500.00 for Bailiff fees for eviction;
- \$120.00 for Court filing fees;
- \$67.46 for a locksmith callout and key cutting;
- \$50.14 for Registered mail receipts for serving;
- \$147.00 for carpet cleaning;
- \$262.50 for apartment cleaning service; and
- \$30.10 for paint to repair damages.

A spreadsheet has also been provided for this hearing showing that the tenant paid rent for July, 2020 on July 16 in the amount of \$1,500.00, leaving a balance outstanding of \$300.00 for that month. It shows that no rent was received for August, 2020 but the tenant paid full rent for September on September 8, 2020. The landlord served a Repayment Plan requiring the tenant to pay \$210.00 per month toward the July and August arrears of \$2,100.00 commencing in October 2020, but the tenant didn't pay any rent at all for October or toward arrears of rent.

The landlord has also provided copies of the 2 Orders from the Residential Tenancy Branch dated November 4, 2020 ordering the tenant to pay the sum of \$1,900.00 to the landlord and an Order of Possession effective on 2 days' notice to the tenant. The landlord's agent testified that the monetary award was for the filing fee and rent for October, 2020. The tenant still owes \$300.00 for July and \$1,800.00 for August, 2020. The tenant paid \$1,900.00 on November 12, 2020, but the balance of \$3,900.00 for July, August and October was not paid. The landlord's amendment claims \$3,900.00 for unpaid rent for July, August, October and November, 2020.

The loss of rental income is for the month of December, 2020. The landlord's agent testified that advertising costs were \$52.50 and has provided an Invoice.

The landlord's amended application also claims unpaid rent of \$3,900.00 and \$4,790.10 for monetary loss which increases the landlord's claim by \$439.60 and includes a claim of \$200.00 for 2 key fobs and a garage door remote, neither of which was returned to the landlord, however the landlord testified that the amount was actually \$160.00, not the \$200.00 claimed.

The landlord has provided an Invoice from the Court Bailiff for the eviction, which was the initial deposit of \$2,500.00. Also provided is a receipt in the amount of \$120.00 for Court filing fees to obtain the Writ of Possession. A new bill has been received from the Court Bailiff dated January 7, 2021 and the landlord was permitted to provide a copy after the hearing concluded. The initial deposit was \$2,500.00 and \$2,274.06 was applied to the move-out. The new Invoice is for \$1,268.40 and the balance of \$225.94 was applied to that, leaving another \$1,042.46 owing to the Bailiff. I now have copies of that evidence.

In October, 2020 the landlord had trouble getting ahold of the tenant and served a notice to inspect the rental unit, but the tenant had changed the locks. The landlord had a locksmith attend and emailed the tenant about it. However, the tenant put the original lock back on without the landlord's knowledge, and the landlord claims the locksmith call-out in the amount of \$67.46, and a receipt has been provided.

The tenant did not leave the rental unit reasonably clean at the end of the tenancy, and the landlord has provided receipts for carpet cleaning and general cleaning, and the landlord's agent testified that the cleaners spent 6 ¼ hours cleaning the rental unit and the landlord's agent spent about 30 hours of unpaid and unrecorded time cleaning.

Two walls required repair at the end of the tenancy, and photographs have been provided for this hearing which the landlord testified were taken on December 9, 2020. The tenant is a carpenter and made a bunk bed, which he screwed to the wall.

The tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit, and the rental unit was re-rented for January 1, 2021.

### Analysis

Firstly, I accept the undisputed testimony of the landlord's agent that the tenant did not vacate the rental unit by the end of November, 2020, but sometime in December with the assistance of a Court Bailiff after the landlord was successful in obtaining a Writ of Possession. I also accept that the tenant was in arrears of rent \$300.00 for July and \$1,800.00 for October, 2020, however the landlord testified that the monetary award made by Arbitration in the amount of \$1,900.00 on November 4, 2020 was for October's rent and the filing fee. I accept that the landlord was not able to claim the \$300.00 arrears for July or August due to the pandemic at that time. The landlord also testified that the tenant paid \$1,900.00 on November 12, 2020. I have reviewed all of the evidence and I find that the landlord has established a claim for unpaid rent in the amount of \$2,100 for July and August, less the \$100.00 overpayment for November's rent. The tenant did not vacate the rental unit in accordance with the notice to end the tenancy, and I find that any notice the

tenant could have given would not have taken effect until the end of December, 2020, and vacated on December 4, 2020 without paying any rent for that month. Therefore, I find that the landlord has established a claim of unpaid rent in the amount of \$1,800.00 for December. The landlord is entitled to recover: \$300.00 for July; \$1,800.00 for August; and \$1,800.00 for December, 2020, less the \$100.00 overpayment in November; for a total of **\$3,800.00** in addition to the \$1,900.00 order the landlord currently has for October, 2020.

Since the rental unit was re-rented for January, 2021, the landlord has not suffered any further loss of rental revenue.

Given that the parties entered into a fixed-term tenancy to expiring on June 30, 2021 and the tenant vacated in December, 2020, I am satisfied that the landlord should recover the advertising cost of **\$52.50**.

Where a party makes a monetary claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such loss, and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord has not provided any supporting evidence to satisfy element 3 in the test for damages as it relates to key fobs and the garage door remote, and I dismiss that portion of the landlord's claim.

I have reviewed the receipts and invoices for Court filing fees for obtaining a Writ of Possession and for the Court Bailiff, and I am satisfied that the landlord has established the claims totaling **\$3,662.46** ( $\$2,274.06 + \$1,268.40 + \$120.00 = \$3,662.46$ ).

I also accept the undisputed testimony of the landlord's agent that the tenant changed the locks to the rental unit, requiring the landlord to call a locksmith. A tenant may not change locks to a rental unit, and given the testimony that the tenant changed the lock back to its original without notice to the landlord, I find that the tenant caused the landlord to incur such a cost by changing the locks contrary to the law. I accept the claim of **\$67.46**.

The *Residential Tenancy Act* provides for recovery of a filing fee for a successful applicant, but does not provide for the costs of service or preparation for a hearing, and therefore, I dismiss the landlord's claim for registered mail.

I have also reviewed the move-in and out condition inspection reports, and I am satisfied that the tenant abandoned the rental unit prior to scheduling the move-out portion. I have also reviewed the photographs provided by the landlord, and I accept the claims of **\$147.00** for carpet cleaning and **\$262.50** for apartment cleaning.

The photographs provided by the landlord also show damage to the bedroom wall, which is not noted on the move-in condition inspection report, and I accept the **\$30.10** claim for paint and repair.

In summary, I find that the landlord has established claims of \$3,800.00 for unpaid rent for July, August and December, 2020; \$52.50 for advertising; \$3,662.45 for Court fees and Bailiff fees; \$67.46 for locks; \$147.00 for carpet cleaning; \$262.50 for apartment cleaning and \$30.10 for paint; for a total of \$8,022.01.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord currently holds a security deposit in the amount of \$900.00. Having found that the landlord is entitled to recover \$8,122.01 from the tenant, I order the landlord to keep the security deposit in partial satisfaction and I grant a monetary order in favour of the landlord for the difference of \$7,222.01.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,222.01.

This order is final and binding and may be enforced.

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 23, 2021

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Residential Tenancy Branch