



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, 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 and utilities in the amount of \$17,535.56, which the Landlord amended to \$17,120.91 in the hearing; and to recover the \$100.00 cost of his 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 twenty minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he 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 him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his 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 and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he obtained an order for substituted service for the Tenant, and he, therefore, was authorized to email the hearing documents to the Tenant, which he said he did on October 29, 2020. The Landlord said that also he served more evidence on the Tenant in another email dated October 29, 2020. 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 the Parties' email addresses in the Application and confirmed these in the hearing. The Landlord also confirmed his understanding that the Decision would be emailed to both Parties and any Orders 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 tenancy agreement that the Landlord submitted indicates that the fixed-term tenancy began on October 1, 2019, and ran to September 30, 2020. The Landlord confirmed that the Tenant paid him a monthly rent of \$3,200.00, due on the first day of each month. The Landlord said that the Tenant paid him a security deposit of \$1,600.00, and no pet damage deposit. The Landlord said that he still held the security deposit to apply to this claim.

The Landlord said that the tenancy ended, because the Tenant failed to pay rent to the Landlord. He also said that the Tenant was allowing other people to live in the residential property as a sub-lease. The Landlord said that the Tenant stopped paying rent at this time. The Landlord said he reached out to the Tenant with a repayment plan for the unpaid rent, but that the Tenant never responded to him.

The Landlord submitted a monetary order worksheet with the following claims:

	Receipt/Estimate From	For	Amount
1	Rent	May 2020	\$3,200.00
2	Rent	June 2020	\$3,200.00
3	Rent	July 2020	\$3,200.00
4	Rent	August 2020	\$3,200.00
5	Rent	September	\$3,200.00
6	Utilities	March 5/20 → July 7/20	\$1,120.91

		<b>Total monetary order claim</b>	<b>\$17,120.91</b>
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The Landlord said that he used the wrong amount in his Application, and as a result, his amount claimed goes down. I find this amendment is not prejudicial to the Tenant, and therefore, I amend the amount claimed by the Landlord for this proceeding, pursuant to Rule 4.2 and section 64(3)(c) of the Act.

In addition to claiming five months of unpaid rent, the Landlord also claims utilities owing for the rental unit from March 5, 2020 through to July 7, 2020. The amount of utilities claimed by the Landlord is \$1,120.91. On May 29, 2020, the Landlord sent the Tenant a demand letter outlining the rent owing to that point, and setting out that the Tenant owed the Landlord \$535.56 for utilities to that point.

The Landlord submitted a utility bill for the residential property, with the billing period of March 5, 2020 through July 7, 2020, which was due by August 21, 2020. The amount of this bill was \$1,120.91.

The Landlord said in the hearing that he sent the updated utility bill to the Tenant in an email dated October 29, 2020.

### 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. Pursuant to section 26 of the Act, I award the Landlord a monetary order of **\$16,000.00** in recovering of the unpaid rent.

Section 46 (6) of the Act sets out that a landlord may consider unpaid utilities as unpaid rent, if the landlord has served the tenant with a written demand for payment of them, and if the utility charges are unpaid for more than 30 days after receipt of the written demand. The Landlord said he sent the Tenant a copy of the utility bill owing on October 29, 2020, and that they remained unpaid as of the date of the hearing, more than 30

days after the demand was made for the utilities. Therefore, I find that the Landlord may consider the utilities owing as unpaid rent pursuant to the Act. I award the Landlord with **\$1,120.91** in unpaid rent from the Tenant for the utilities owing on the residential property from the tenancy. I also award the Landlord recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

#### 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 \$1,600.00 in partial satisfaction of the Landlord's monetary claim.

For	Award
May 2020	May 2020
June 2020	June 2020
July 2020	July 2020
August 2020	August 2020
September	September
Mar 5/20 → July 7/20	Mar. 5/20 → July 7/20
Filing fee	\$100.00
Sub-total	\$17,220.91
Less security deposit	(\$1,600.00)
<b>Total Award</b>	<b>\$15,620.91</b>

The Landlord is authorized to retain the Tenant's \$1,600.00 security deposit in partial satisfaction of this award.

I grant the Landlord a Monetary Order of **\$15,620.91** from the Tenant pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in his Application for unpaid rent and utilities from the Tenant. The Landlord is awarded \$17,120.91 in this regard. The Landlord is also awarded recovery of the \$100.00 Application filing fee.

The Landlord is authorized to retain the Tenant's \$1,600.00 security deposit in partial satisfaction of these awards.

I grant the Landlord a Monetary Order of **\$15,620.91** from the Tenant. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 11, 2021

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Residential Tenancy Branch