



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, OPC, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a One Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- a monetary order for compensation for unpaid rent, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:51 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent JF (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.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on November 13, 2020, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on November 18, 2020, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord informed me the tenant moved out on December 17, 2020. An order of possession was issued. The tenant's prior application file is mentioned on the cover page of this decision.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

### Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$9,000.00 in unpaid rent to include an additional \$850.00 for the 17 days unpaid *pro rata* rent of December 2020.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$9,850.00.

### Issues to be Decided

Is the landlord entitled to

1. a monetary order for unpaid rent?
2. an authorization to recover the filing for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is his obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started in November 2019 and ended on December 17, 2020. Monthly rent was \$1,500.00 due on the first day of the month.

The landlord did not receive any payment for rent due on June, July, August, September, October, November and December 01, 2020. The landlord is seeking a monetary compensation in the amount of \$9,850.00 for unpaid rent.

The landlord submitted into evidence a monetary order worksheet.

### Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act. The Act defines tenancy agreement as: “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.”

Based on the undisputed testimony and the monetary order worksheet, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,500.00 on the first day of each month and owes the landlord \$9,850.00 for June, July, August, September, October and November 2020 rent and the *pro rata* rent of December 2020 (17 days at \$50.00 per day).

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

In summary, the landlord is entitled to a monetary award in the amount of \$9,950.00.

### Conclusion

Pursuant to sections 67 and 72 of Act, I grant the landlord a monetary order in the amount of \$9,950.00.

The landlord is provided with this order in the above terms and 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: February 01, 2021