



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNRL-S, 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 in the amount of \$17,550 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 1:48 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's administrator ("**RD**") 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 RD and I were the only ones who had called into this teleconference.

RD testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on November 5, 2020. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The package was delivered to an address where the tenant resides which was obtained after a lengthy skip-tracing processes. I accept RD's testimony that the tenant currently lives at the address the package was mailed to. I find that the tenant was deemed served with this package on November 10, 2020, five days after RD mailed it, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$17,550;
- 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 RD, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting December 15, 2015. Monthly rent was \$1,950 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$925, which the landlord continues to hold in trust. The landlord served a 10 Day Notice to End Tenancy on the tenant on or about December 7, 2019. RD attended the rental unit on December 17, 2019 and discovered that the tenant had vacated the rental unit without notice to the landlord. The tenant did not provide the landlord with a forwarding address.

RD testified that the tenant is \$17,550 in rental arrears, representing non-payment of rent for February to November 2019 (the tenant pay rent once during this period, on September 18, 2019). The landlord submitted a ledger into evidence corroborating this amount.

RD testified that, in 2018, the tenant was in the habit of pre-paying rent, making two rent payments in a single month. These double payments are shown in the landlord's ledger. Usually, the tenant would then skip paying the following month's (or months', as the case may be) rent. The tenant prepaid December 2018 and January 2019 rent on November 19, 2018.

RD testified that she was not as diligent as she ought to have been when monitoring the tenant's rent payments. She testified that she did not realize that the tenant was in arrears for his rent payments for a few months. She thought that the non-payment of rent was due to a credit having been built up by pre-payments (she testified that, prior to February 2019, she had no issues with the tenant paying rent).

When RD realized that the tenant was in arrears, she contacted the tenant. She testified that the tenant told her that his ex-wife had emptied his bank account and he was working on freeing up money from an investment account to pay the rent. RD testified that the tenant sounded sincere in his desire to repay the arrears. However, but for a solitary payment of \$1,950 on September 18, 2019, the tenant did not pay the landlord anything between February 1, 2019 and November 1, 2019. RD testified that by the end of November 2019, the landlord was not prepared to continue the tenancy in light of the large amount of arrears and issued a notice to end tenancy.

As stated above, RD testified that the tenant owes the landlord \$17,550 in rent arrears and that the landlord seeks a monetary order for this amount.

### **Analysis**

Section 26(1) of the Act states:

**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 accept RD's testimony, corroborated by the ledger submitted into evidence, that the tenant failed to pay rent in the amount of \$17,550. I accept her explanation as to why the landlord allowed the arrears to reach the level they did before it terminated the tenancy.

The tenant was obligated to pay his rent in full and on time. He did not do this. As such, I order that the tenant pay the landlord \$17,550.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it 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 the tenant pay the landlord \$16,725, representing the following:

Description	Amount
Rental arrears	\$17,550
Filing Fee	\$100
Security Deposit Credit	-\$925
<b>Total</b>	<b>\$16,725</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: February 8, 2021

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Residential Tenancy Branch