



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL-S, MNRL-S**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary award for unpaid rent, damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree that this tenancy began on September 1, 2020. The landlord says that the monthly rent was \$1,575.00 payable on the first of each month. A security deposit of \$787.50 was payable at the start of the tenancy. A copy of the tenancy agreement was submitted into evidence, the landlord says that the tenants failed to sign the written tenancy agreement despite several attempts to have them sign.

The landlord collected a deposit of \$500.00 at the start of the tenancy and had made demand for the balance of \$287.50 which the tenants failed to pay. The landlord submits that the tenants did not pay the full rent for the month of September 2020 and no amount for October 2020 and there is a rental arrear of \$2,250.00 as at the date of the hearing.

The landlord also submits that the tenants failed to pay any of the utilities for the rental unit as required under the tenancy agreement. The landlord submitted invoices for the utilities and says that the total utility arrear is \$51.12. The tenants vacated the rental unit sometime in October 2020. The tenants left some furniture and items in the rental unit which the landlord estimates will cost \$150.00 to have removed.

The tenants submit that the monthly rent was \$900.00 and that a deposit of \$500.00 was paid. The tenants say that they never signed the draft tenancy agreement and that the parties had agreed to a reduced rent for the use of a lesser portion of the rental unit. The tenants say that the receipts issued by the landlord for the payments indicate they were accepted for rent and security deposit and therefore is evidence that payments were made in full.

The tenants say they were never provided with the utility invoices and did not have an opportunity to pay. The tenants also submit that they were forced to vacate the rental unit in a hurry due to the landlord issuing a 10 Day Notice to End Tenancy for Unpaid Rent on October 1, 2020 and were therefore unable to clean the rental unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied with the landlord's evidence including their testimony and documentary materials that monthly rent for this tenancy was \$1,575.00, utilities were not included in the rent and that a security deposit of \$787.50 was demanded at the outset.

I find the tenants' submission that there was an agreement for a lower rent to not be supported in the materials and inconsistent with the documentary evidence. The landlord issued a 10 Day Notice indicating that the full amount of the rent is \$1,575.00. The landlord noted on the receipts issued for partial payment that payment was accepted "towards rent" and while the specific words "for use an occupancy only" are not used it is evident that the partial payment was not accepted as the full amount owing. I find that there was no waiver on the part of the landlord, either expressly or implied, that the rent for this tenancy was reduced to \$900.00 or that the tenants were not required to provide a full security deposit of \$787.50. I find the tenants' submission that they only utilized a portion of the rental suite and were therefore not obligated to pay the full rent amount to be patently ridiculous and have no basis in logic or reality.

While the tenants did not sign the written tenancy agreement form, based on the evidence I find that there was a valid agreement between the parties wherein the tenants were obligated to pay monthly rent in the amount of \$1,575.00 on the first of each month. I accept the undisputed evidence of the parties that the tenants failed to pay this amount and find that there is an arrear of \$2,250.00 as at the date of the hearing. Accordingly, I issue a monetary award in the landlord's favour for that amount.

I accept the undisputed evidence of the parties that the tenants failed to pay any amount towards utilities for this tenancy. I accept the landlord's submission that the total unpaid utility charges are \$51.12 and issue an award for that amount.

I accept that the tenants left furniture and items in the rental unit for which the landlord will incur costs to remove and dispose. I accept the landlord's estimate of the cost for disposal of \$150.00. Based on the evidence including the photographs and testimony I find this to be an accurate and reasonable estimate commensurate with removing the large items left on the premises. I therefore issue a monetary award to the landlord for that amount.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,951.12. The tenants must be served with this Order as soon as possible. Should the tenants 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 12, 2021

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Residential Tenancy Branch