



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

The landlord filed an Application for Dispute Resolution on November 6, 2020 seeking an order to recover monetary loss. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on February 25, 2021 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord and the tenant both attended the hearing. In the hearing, the landlord confirmed they delivered notice of this hearing and their prepared evidence to the tenant, and the tenant confirmed they received that package. The tenant stated they had difficulty with providing their evidence to the landlord via courier.

### Preliminary Matter

The evidence from the tenant was submitted to the Residential Tenancy Branch on February 23, 2021. This is two days in advance of the hearing and the tenant stated their attempt at providing their evidence to the landlord was two days before the hearing. There is no evidence of receipt by the landlord in time for the hearing, and the landlord stated they did not receive it.

The *Residential Tenancy Branch Rules of Procedure* sets out the rule for the respondent's evidence. By Rule 3.15, they must ensure their evidence is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. This is

not less than seven days before the hearing. I advised the parties at the outset of the hearing that late evidence may or may not be considered depending on the scenario and the way it is relied upon by either party. On any relevant piece, I would decide whether the landlord needed opportunity to review that specific piece. This is an application of Rule 3.17.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for compensation for damages, and other monetary loss, pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms therein. Both the landlord and tenant signed this agreement on December 12, 2019. The second tenant arrived later and signed the agreement on January 3, 2020. The tenancy started on December 12, 2019 for a fixed term ending on November 30, 2020. The monthly rent was \$1,300 per month. The tenant paid a security deposit of \$650.

The tenancy ended when the tenant vacated the unit in October 2020. The landlord provided that the tenant began their move out without communicating that to the landlord. The landlord messaged to have an inspection meeting on a set day with no communication back from the tenant to set a date. On October 6, the tenant gave a statement to the landlord that they were moving out, then did so slowly two weeks later starting on October 21.

On October 25 the landlord messaged to the tenant. A copy of that message appears in the tenant's documents, and the landlord read that same message from their own phone verbatim in the hearing, confirming the exact time of 7:36 p.m. This message states:

I possibly have someone to move into your suite for November so you don't have to pay or worry about electricity etc. Is this something you are interested in? That way we can meet soon to do walk through inspection etc

The landlord stated they received no response from the tenant. The tenant responded to this to say that everything became an argument at that point; however, they were aware of this message.

In the hearing the landlord stated this was an offer to the tenant to facilitate a set-up for another party to occupy the rental unit for the month of October. If the tenant agreed to this, it would mean the landlord would not lose the final month of November's rent. Reciprocally, this meant the tenant would then not have to pay November to the landlord. November was the final month of the fixed-term tenancy. The landlord reiterated that they would not instruct the tenant to not pay rent.

The tenant described this same message as that of the landlord stating to the tenant they did not have to pay rent for November. The tenant reiterated that at no time did they refuse to pay rent; rather, this was a message from the landlord to state they did not have to. In the hearing the tenant gave their account of the landlord calling that same meeting day in the morning to say: "you know. . .just don't worry about November rent because I have someone moving in." The person the landlord referred to also attended to the move-out inspection meeting.

The tenant and landlord met on October 29, 2020 for the inspection meeting. The landlord provides that they pointed out cleaning needs to the tenant and proposed 4 hours of extra time as recompense from the tenant, but the tenant would not agree to this. The landlord submitted 12 photos showing what they submit is the need for extra cleaning. They also provided a copy of the Condition Inspection Report from that meeting, showing their "4 hrs cleaning" estimate. The tenant did not sign this agreement and only provided a forwarding address at the bottom of the signature page.

In the hearing the tenant gave their account of the move-out inspection meeting. The only concerns raised by the landlord at that time were a light and under the oven needing more cleaning. They added that they hired their own cleaner prior to their final move out.

### Analysis

From the testimony of the parties I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount and the paid security deposit.

The *Act* section 45 covers how a tenant may end a fixed-term tenancy. It provides that a date shall not be earlier than one month after the landlord receives the notice, and is not earlier than the end-of-tenancy date in the agreement. Here, the landlord did not receive notice from the tenant in a timely fashion, and not within these prescribed timelines in the *Act*. For this reason, I find the landlord is entitled to the amount of November rent for \$1,300. The tenant is legally obligated to pay this amount of rent.

I find as fact that the landlord did not give explicit approval for the tenant to not pay the November rent. The tenant provided a specific piece of evidence on this important dialogue with the landlord. Given that the landlord read verbatim the same message independently from their own device, I accept this message as it was provided by the tenant into the evidence. I have verified what the landlord read is the same text message as that which appears in the tenant's evidence.

The important piece of the dialogue is: "Is this something you are interested in?" That means the landlord is asking the tenant for their input. I accept the landlord's evidence that they did not receive an answer to this specific question, and no reply to this appears in the tenant's own document.

I do not accept that the landlord announced to the tenant that November rent was not necessary. It is inconsistent with what the landlord presents in their text message. Given the text message – which contains an important question to the tenant and NOT an explicit instruction from the landlord – is verified evidence between the two parties, this carries my finding, over that of each party's recollection of a phone call. Both parties acknowledged that at that point communication was strained and even argumentative – I find this detracts from both parties' ability to recall with clarity the oral communication that was had. I find the text message as it appears in the evidence lends credence to the landlord's point that they did not give away the month of November rent-free.

I find the tenant is legally obligated to pay the rent for the month of November. This is an award to the landlord for \$1,300.

Additionally, the landlord claimed \$100 for four hours of cleaning time post tenant move-out.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The evidence that supports the landlord's claim is a copy of the Condition Inspection Report completed on the date the tenant moved out and attended for a meeting with the landlord. This lists several items as 'not clean' and contains the landlord's notation for "4 hours of cleaning". For this, I find the landlord credible that they presented this amount to the tenant at the time of the meeting; however, the tenant did not agree.

The landlord additionally provides photos that show the state of the unit in fine detail. I find the four hours' estimate by the landlord to be accurate and legitimate for the nature of cleaning involved. By attending to the cleaning on their own, thereby avoiding the hiring of other outside contractors or cleaners, I find the landlord has minimized the loss on this point.

This is a case where the tenant's documentary evidence is not provided to the landlord to show otherwise, and their pieces here do not receive my consideration for that reason. With no evidence to outweigh that of the landlord on this portion of the landlord's claim, I so award \$100 to the landlord.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1,400. After setting off the security deposit amount of \$650, there is a balance of \$750. I am authorizing the landlord to keep the security deposit amount and award the balance of \$750 as compensation for amounts owing as claimed.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$850. The landlord is provided with this Order in the above terms and 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 *Act*.

Dated: March 1, 2021

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Residential Tenancy Branch