



# 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

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

- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security and pet damage deposits (the deposits) in satisfaction of the monetary order requested, under section 72; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:02 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. Landlords AN (the landlord) and AD attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Agent SL for the landlords also attended. 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 landlords, their agent 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 17, 2020, in accordance with section 89(1)(d) 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 22, 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 – Request to Amend the Application to Include Utilities

At the hearing the landlord stated the tenant did not pay a utility bill in the amount of \$51.84. This bill was received by the landlord on January 19, 2021.

Residential Tenancy Branch Rules of Procedure Rule 4.2 provides

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."

In this matter, the Notice of Dispute Resolution served by the landlord requested a monetary order for compensation for a utility bill due on December 04, 2020 in the amount of \$83.37. I find the tenant could reasonably have anticipated that the landlords would amend their application at the hearing to include a claim for compensation for a second utility bill related to the tenancy due on January 19, 2021 in the amount of \$51.84, as this bill is also related to the tenancy. As such, I amend the landlords' claim for unpaid utilities to include the amount of \$51.84.

### Issues to be Decided

Are the landlords entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's deposits?
4. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all the evidence provided by the attending party, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is the landlords' obligation to present the evidence to substantiate their claims.

The landlord stated the tenancy started on August 15, 2020 and ended on November 02, 2020. Rent was \$2,600.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$1,300.00 and a pet damage deposit of \$1,300.00 were collected. The landlords hold the deposits in the total amount of \$2,600.00 in trust. The tenancy agreement was submitted into evidence. It indicates water is not included in the rent payment.

The landlord testified the tenancy agreement was supposed to be for a fixed term from August 15, 2020 to September 01, 2021. However, the tenancy agreement erroneously states the end date of the tenancy is September 01, 2020.

The landlord stated the rental unit complex contains two independent rental apartments sharing the main access and both units were rented to the tenant.

On October 26, 2020 the tenant sent a text message to the landlord giving notice to end tenancy. The landlord obtained vacant possession of the rental unit on November 02, 2020. The landlord re-rented the rental unit on November 15, 2020.

The tenant paid \$174.90 for part of November 2020 rent. The landlord is claiming for \$2,600.00 for November 2020 rent.

A condition inspection report (the report) was signed by both parties for the main unit and another for the basement unit. The reports state on section Z (end of tenancy): "Damage deposit \$1300 + pet deposit \$1300 not refunded at this time due to insufficient notice / to be discussed, not agreed to at this time". The tenant signed section Z, subsection 2, authorizing the landlord to retain the full amount of the deposits and provided her forwarding address on November 02, 2020.

The landlords are claiming for the water bills due on December 04, 2020 (\$83.37) and January 19, 2021 (\$51.84). The landlords sent the bills to the tenant, but she did not pay them.

A monetary order worksheet in the total amount of \$2,683.37 was submitted into evidence. This application was filled on November 09, 2020.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

#### Unpaid rent

Based on the tenancy agreement, I find the tenancy was for a fixed term from August 15, 2020 to September 01, 2020 and it continued after this date as a periodic tenancy, per section 44(3) of the Act:

If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement:

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 the landlord's uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of \$2,600.00 on the first day of the month.

I accept the landlord uncontested evidence that the tenant did not provide a one month notice to end tenancy, as required by section 45(1) of the Act:

(1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a)is not earlier than one month after the date the landlord receives the notice,  
and

(b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenant did not provide a one month notice to end tenancy per section 45 of the Act, the tenant must pay November 2020 rent.

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant is in arrears for the rent of November 2020 in the amount of \$2,425.10 (\$2,600.00 monthly rent subtracted the received amount of \$174.90).

#### Utilities

I accepted the uncontested testimony and the tenancy agreement that the tenant must pay for the water bills and she did not pay the water bills in the amount of \$83.37 due on December 04, 2020 and \$51.84 due on January 19, 2021.

Thus, the tenant did not comply with the tenancy agreement and owes the landlord the amount of \$135.21 for two water bills.

#### Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord confirmed receipt of the tenant's forwarding address on November 02, 2020 and brought an application for dispute resolution on November 09, 2020, within the timeframe of section 38(1) of the Act.

#### Filing fee and summary

As the landlords were successful in this application, the landlords are entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to

a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlords to retain the tenant's deposits of \$2,600.00 in partial satisfaction of the monetary award granted.

In summary:

Balance of unpaid rent November 2020	\$2,425.10
Utilities	\$135.21
Filing fee	\$100.00
Minus deposits	\$2,600.00 (subtract)
<b>Total monetary award</b>	<b>\$60.31</b>

### Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlords to retain the \$2,600.00 deposits and grant the landlord a monetary order in the amount of \$60.31

The landlords are provided with this order in the above terms and the tenant must be served with this order. 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: March 09, 2021

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Residential Tenancy Branch