



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPC, MNRL-S, FFL

### **Introduction**

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$3,425 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:17 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlords' property manager ("**AG**") 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 AG and I were the only ones who had called into this teleconference.

AG testified he served that the tenants with the notice of dispute resolution form and supporting evidence package via registered mail. He could not locate the Canada Post tracking number for this mailing but testified that the tenants emailed him after they received this package and confirmed receipt. I accept his testimony on this point as true. I find that the tenants have been served in accordance with the Act.

### **Preliminary Issue – Tenants Vacate the Rental Unit**

AG testified that the tenants vacated the rental unit on December 20, 2020, shortly after receiving the hearing package. He testified that the landlords no longer require an order of possession. Accordingly, I dismiss this portion of the landlords' application, with leave to reapply.

### **Issues to be Decided**

Are the landlords entitled to:

- 1) a monetary order for \$3,425;

- 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 AG, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of AG's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting November 1, 2018. The tenants moved in on October 15, 2018 and paid a pro-rated amount for the latter half of October rent. Monthly rent was \$1,700 and is payable on the first of each month. The tenants paid the landlords a security deposit of \$850. No pet damage deposit was paid. The landlords still retain this deposit.

On October 26, 2020, the landlord sent the tenants a one month notice to end tenancy for cause (the "**Notice**") by registered mail (Canada Post tracking number reproduced on the cover of this decision). It listed an effective date of November 25, 2020.

The tenants did not dispute the Notice. However, they did not vacate the rental unit on the effective date of the Notice. Rather, they remained in the rental unit until December 20, 2020. AG testified that the tenants did not provide the landlords with a forwarding address when they left.

AG testified the tenants are \$3,425 in arrears. The landlords provided a copy of their ledger for the tenants showing debits and credits to the tenants' account.

AG testified that the tenants had authorized the landlord to make monthly withdrawals of \$1,700 on the first of each month from their bank account. He testified that there was insufficient funds in the tenants' bank account to satisfy the November rent payment. This amount remains unpaid.

The tenancy agreement contains a clause which permits the landlord to charge a \$25 NSF fee (clause 13). The landlord charged the tenants that amount, which appears in the ledger.

AG testified that due to a clerical error on the landlords' bookkeeper's part, the landlords withdrew \$1,700 from the tenants' account on December 1, 2020 but then immediately reversed the withdrawal, as the bookkeeper (mistakenly) understood that the tenants had vacated the rental unit on the effective date of the Notice (November 25, 2020). As stated above, this was not the case. The bookkeeper then corrected this misapprehension and reapplied a charge of \$1,700 to the tenants account, which remains outstanding.

## **Analysis**

Per the tenancy agreement, I find that the tenants were required to pay monthly rent of \$1,700 and that the landlord was permitted to charge a \$25 NSF fee.

I find that the tenants' account had insufficient funds on November 1, 2020 to cover November's rent and that no part of November 202 rent was paid. Accordingly, the tenants must pay the landlord \$1,700 to cover this amount, plus the \$25 NSF fee.

I do not, however, find that the tenants are obligated to pay the full amount of rent for the month of December. Sections 47(4) and (5) of the Act state:

### **Landlord's notice: cause**

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The tenants did not dispute the Notice. Therefore, they are conclusively presumed to have accepted that the tenancy ended on November 25, 2020. As such, the tenants no longer have an obligation under the tenancy agreement to pay monthly rent. However, this does not mean that the tenants may remain in the rental unit without compensating the landlords. Section 57 of the Act applies:

### **What happens if a tenant does not leave when tenancy ended**

**57** (1) In this section:

[...]

"overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

[...].

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Residential Tenancy Branch Policy Guideline 3 discusses overholding tenants:

A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to [section 44 of the Act], however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

As such, the tenants are obligated to compensate the landlords for their continued occupation of the rental unit after the tenancy ended on a per day basis. The tenants

occupied the rental unit for 20 days in December. The per day rate is \$54.84 (\$1,700 / 31 days). Therefore, the tenants must pay the landlords \$1,096.80 (20 days x \$54.84).

Pursuant to section 72(1) of the Act, as the landlords have been mostly successful in the application, they may recover their filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlords 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 tenants pay the landlords \$2,071.80, representing the following:

<b>Description</b>	<b>Amount</b>
November Arrears	\$1,700.00
NSF Fee	\$25.00
December Overholding	\$1,096.80
Filing Fee	\$100.00
Security Deposit Credit	-\$850.00
<b>Total</b>	<b>\$2,071.80</b>

I order the landlords to serve a copy of this decision and attached monetary order on the tenants upon receipt. As the tenants have not provided a forwarding address to the landlords, and as the landlords and tenants have communicated by email regarding the tenancy in the past, pursuant to section 71(1) of the Act, I order that the tenants may be served substitutionally at the email address on the cover of this decision.

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 4, 2021

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Residential Tenancy Branch