



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$21,666.00.

The Landlord and an agent for the Landlord, A.P. ("Agent"), appeared at the teleconference hearing, and the Agent gave affirmed testimony. The Agent is the Landlord's son, and the Landlord said she cannot speak English well, so she wanted her son to represent her. The Agent translated for the Landlord throughout the hearing.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing, the Agent had the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Hearing documents. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with these documents by Canada Post registered mail, sent on December 4, 2020. The Agent provided a Canada Post tracking number as evidence of service. I checked the Canada Post tracking number, and I found that the Landlord's Notice of Hearing package was delivered on December 7, 2020. I find that the Tenant was served with the Landlord's hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

### Preliminary and Procedural Matters

The Agent provided the Parties' email addresses in the Application, and he confirmed

these addresses in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which the Agent pointed or directed me in the hearing.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

#### Background and Evidence

The tenancy agreement states, and the Agent confirmed in the hearing, that the periodic tenancy began on September 25, 2019, with a monthly rent of \$2,500.00, due on the first day of each month. The Agent said the Tenant was supposed to pay the Landlord a security deposit of \$1,250.00, and a \$1,250.00 pet damage deposit; however, the Agent said that the Tenant never paid the Landlord any deposits or rent throughout the tenancy.

The Landlord applied for recovery of unpaid rent and other debt of \$21,666.00 from the Tenant. The Agent said the Tenant lived in the rental unit from September 25, 2019 until May 15, 2020, at which time she moved out.

The Agent said that he works in real estate and that the Tenant was living in one of his client's condominiums, but she owed the client over \$10,000.00 in unpaid rent. The Agent said that he felt bad for the client and for the Tenant, and therefore, the Agent allowed the Tenant to rent his mother's condominium for three months, which turned into nine months. The Agent submitted a monetary order worksheet for the amount he says is owing by the Tenant to the Landlord:

	For	Amount
1	Rent Sep 25/19 to Mar 25/20	\$15,000.00
2	Last week in March 2020	\$625.00
3	April 2020	\$2,500.00
4	May 2020	\$2,500.00

5	Court fees	\$120.00
6	Moving	\$200.00
	<b>Total monetary order claim</b>	<b>\$20,945.00</b>

In addition to unpaid rent and deposits, the Agent said that he paid some court fees for the Tenant, so that she could dispute in a family law action against her former spouse. The Agent said he also loaned the Tenant \$200.00 for moving fees to get from the Agent's client's condominium to the Landlord's rental unit.

The Landlord submitted an email exchange between the Tenant and the Agent dated February 24, 2020, which the Agent said demonstrates the Tenant's acknowledgement of the debt owing. These emails read as follows [reproduced as written]:

At 2:31 p.m. the Tenant emailed the Agent:

Hi [Agent]

Did you get my text? Are we agreed that I can stay till end of March?

[Tenant]

At 3:15 p.m. the Agent responded to the Tenant:

Yes, you can stay until end of March, you owe me rent from sep 25<sup>th</sup> 2019, plus 1250 deposit, 2500 times 6 plus 625 for one more week plus 1250 which total is 16855 dollars, plus 120 for court filing fee. and 200 moving fee from Taylor's to [rental unit address]. are we agreed?

At 3:23 p.m. the Tenant responded:

Hi [Agent]

Agreed.

Thank you,

[Tenant]

The Landlord submitted a series of text communications between the Parties between April 17, 2020 and May 20, 2020. The discussion covers the Landlord's fairly gentle

encouragement for the Tenant to find another place to live, as the Agent said that the Tenant had been living there without paying rent since September of the previous year. The Tenant indicates that she has made appointments to see other units, although the Landlord tells her that she is moving too slowly. The Tenant replies that it is "...hard to find 2 bed 2 bath that is not tiny", to which the Landlord replies: "Don't try to find a perfect place, just find a place".

The Landlord asks if the Tenant is "...still gonna drive your stuff to my parents house garage?" and the Tenant replies: "I am looking & still organizing my stuff." The Tenant complains that the Landlord gave her until they sold the rental unit to move out. The Agent replies:

You agreed to give me vacant unit at the end of March, it has been 15 days passed, and still you have not found a new place, even I say I will provide you deposit and even I gave you my truck for you to move stuff.

The Tenant indicates that she wants to find a bigger unit. Ultimately, the Tenant moved out on May 15, 2020. There is no evidence before me that the Tenant ever paid any rent or security or pet damage deposits to the Landlord for her time living in the Landlord's residential property.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord under their tenancy agreement.

I find from the Tenant's communications with the Landlord through texts and emails noted above, that the Tenant is aware of the debt she owes to the Landlord and has agreed that she owes the Landlord this money.

I find that the Tenant lived in the rental unit from September 25, 2019 to May 15, 2020, and that she is therefore obligated to pay rent for nine months in total at \$2,500.00 per

month for a total of \$22,500.00. While the Tenant lived in the rental unit for only parts of September 2019 and May 2020, I find that the rental unit was unavailable to be rented during those months, and therefore, that the Tenant owes the Landlord for the full months' rent.

The Landlord has claimed for the deposits; however, I find that it is too late to require the Tenant to pay these deposits, as they are only payable for existing tenancies. As a result, I dismiss the Landlord's claim for payment of the Deposits by the Tenant.

Further, recovery of the debt owing to the Agent by the Tenant for moving and court fees is not something that is within the authority of the Act. I, therefore, dismiss these claims without leave to reapply.

Based on the evidence before me overall, I find on a balance of probabilities that the Tenant owes the Landlord \$22,500.00 in unpaid rent for the time the Tenant lived in the rental unit. I, therefore, award the Landlord with \$22,500.00 from the Tenant pursuant to section 67 of the Act.

### Conclusion

The Landlord is successful in her Application for a monetary award for unpaid rent from the Tenant. I grant the Landlord a monetary order of \$22,500.00 from the Tenant pursuant to section 67 of the Act.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) 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: April 01, 2021

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Residential Tenancy Branch