



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL, FFL, MNDL**

### Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:55 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord 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 the landlords and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution hearing.

The landlord testified that the tenant was served via e-mail on December 18, 2020, in accordance with a Substituted Service Decision dated December 14, 2020. The Substituted Service Decision states in part:

I am satisfied that the tenant's unwillingness to provide a forwarding address has left the landlord incapable of serving the Notice of Dispute Resolution hearing documents, along with evidence and written submissions, to the tenant, and that

the landlord has provided sufficient reasons to warrant the issuance of a substituted service order pursuant to section 71 of the Act.

I also find that the landlord has provided sufficient evidence to establish that the tenant's email address is currently active and it is reasonable to expect that the tenant will receive documents served by email.

I have reviewed all documentary evidence and find that the email address provided for the tenant is still currently active, as the tenant corresponded with the landlord by sending and receiving email messages as recently as July 18, 2020. Therefore, it is reasonable to expect that the tenant will receive documents served by email.

I further find that it would be reasonable to conclude that the tenant would receive the Application for Dispute Resolution and Notice of Dispute Resolution hearing documents and have actual knowledge of the landlord's application for dispute resolution if it is served to the email address provided for the tenant, as indicated on the cover page of this decision.

For the reasons cited above, I allow the landlord substituted service of the Application for Dispute Resolution and Notice of Dispute Resolution hearing documents, with supporting documents and written evidence, by email to the tenant at the email address provided for the tenant, as indicated on the cover page of this decision.

I order the landlord to provide proof of service of the email which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the email was opened and viewed by the tenant.

The landlord entered into evidence a screenshot of the email in which the landlord served the tenant with this application for dispute resolution. The above email is dated December 18, 2020. The landlord entered into evidence a screen shot of an email in which the landlord served the tenant with evidence for this proceeding. The above email is dated December 19, 2020.

I find that the landlord has proved, on a balance of probabilities, that the landlord served the above documents on the tenant in accordance with the Substituted Service Decision and section 71 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on January 1, 2020 and ended on August 10, 2020. Monthly rent in the amount of \$1,150.00 was payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenant did not provide notice to end tenancy and moved out on August 10, 2020. The landlord testified that the tenant's neighbour informed the landlord that the tenant moved out. The landlord testified that he called the tenant on August 11, 2020 and the tenant confirmed she moved out. The landlord testified that the tenant did not provide a forwarding address.

The landlord testified that the tenant only paid \$500.00 towards July 2020 rent and did not pay anything for August 2020's rent.

The landlords testified that the subject rental property is a house with an upper and lower suite. The landlord testified that the tenant resided in the basement suite. The

landlord testified that the hydro and cable for the entire house are in the upstairs tenant's name and that the tenant had an agreement with the upstairs tenant that she would pay 30% of the hydro and cable bills.

The landlord testified that the tenant did not pay her portion of the bill in March of 2020 and that he paid \$100.00 towards hydro in March of 2020 to prevent the electricity from being turned off. The landlord testified that at the end of the tenancy the tenant owed the upstairs tenant \$350.00 and that the landlord paid the upstairs tenant the \$350.00 on the tenant's behalf. The landlord testified that he is seeking \$450.00 in unpaid hydro and cable bills.

The landlord entered into evidence a signed letter from the upstairs tenant which states that the landlord paid the tenant's outstanding hydro and cable bills in the amount of \$350.00. No bills were entered into evidence. The tenancy agreement states that electricity and cable are not included in the rent but does not mention an agreement to split cable and hydro with the upstairs tenant. No written agreement regarding a utility payment agreement was entered into evidence.

The landlord testified that a move in/out condition inspection report was not completed at the start or end of this tenancy. The landlord testified that he does not have documentary evidence to prove the move in condition of the subject rental property but testified that it was renovated in December 2019 just before the tenant moved in. No proof of the renovation was entered into evidence.

The landlord testified that the tenant put 15 holes in the walls and that the walls had to be patched and painted. The landlord entered into evidence photographs of the holes in the walls. The landlord testified that it cost \$440.00 to repair all the holes. No receipts or estimates were entered into evidence.

The landlord testified that the tenant left garbage and a sofa at the subject rental property which cost \$130.00 to take to the dump. Photographs of same were entered into evidence. No receipts or estimates were entered into evidence.

The landlord testified that he hired a cleaning lady to clean the subject rental property because the tenants did not clean the property at the end of the tenancy. The landlord testified that he paid the cleaning lady \$125.00. No receipts or estimate were entered into evidence.

The landlord testified that the tenant did not return the keys to the subject rental property, so he had to replace the locks. The landlord testified that two locks, each \$30.00 were purchased to replace the old ones. No receipts or estimates were entered into evidence.

The landlord testified that the subject rental property came equipped with a curtain and curtain rod and that these items were missing at the end of the tenancy. The landlord testified that the curtain and rod cost \$70.00 to replace. No receipts or estimates were entered into evidence.

The landlord testified that the subject rental property came equipped with a microwave and that it was missing at the end of the tenancy. The landlord testified that the microwave cost \$40.00 to replace. No receipts or estimates were entered into evidence.

The landlord testified that the CO2 alarm was brand new at the start of this tenancy and was broken at the end of this tenancy. The landlord testified that the CO2 alarm cost \$15.00 to replace. No receipts or estimates were entered into evidence.

The landlord testified that the subject rental property came equipped with a showerhead and that it was missing at the end of the tenancy. The landlord testified that the shower head cost \$15.00 to replace. No receipts or estimates were entered into evidence.

The landlord entered into evidence an email to the tenant dated October 28, 2020 which outlines the landlord's entire above claim for damages and unpaid rent.

### Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four parts of the below four part test:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

I find that the landlord failed to prove the move in condition of the subject rental property and failed to prove the value of the loss allegedly suffered because no receipts or estimate proving the value of the loss were entered into evidence. I dismiss the landlord's claims for the following damages to the subject rental property as the third test outlined in Policy Guideline 16 was not met:

- repairs to the walls
- disposal of sofas and garbage
- cleaning
- locks
- curtain and curtain rod
- microwave
- CO2 alarm, and
- shower head.

While I am satisfied that the landlord paid the upstairs tenant \$350.00 for cable and hydro. I find that the landlord has not proved that the tenant owed \$350.00 for cable and hydro as the cable and hydro bills were not entered into evidence, nor was proof of the

tenant's responsibility to pay 30% of those utilities. Likewise, I find that the landlord has not proved that the tenant owed \$100.00 in utilities in March 2020 as no bills or other evidence from the hydro authority were entered into evidence. I therefore dismiss the landlord's claims for hydro and cable.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act* and the tenancy agreement, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,150.00 on the first day of each month. I accept the landlord's undisputed testimony that the tenant only paid \$500.00 towards July 2020's rent and did not pay any rent for August 2020. I find that the tenant's breach of section 26(1) of the *Act* resulted in a quantifiable loss to the landlord in the amount of \$1,650.00 and that the landlord is entitled to recover this amount from the tenant.

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$550.00 in part satisfaction of the landlord's monetary claim for unpaid rent.

In the hearing the landlord confirmed the e-mail address on file was correct for service of this decision.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
July rent	\$650.00
August rent	\$1,150.00
Filing fee	\$100.00
Less security deposit	-\$550.00
<b>TOTAL</b>	<b>\$1,350.00</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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: April 19, 2021

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Residential Tenancy Branch