



# 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 December 10, 2020 seeking an order to recover monetary loss for unpaid rent and other money owing. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on April 19, 2021 pursuant to s. 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 on December 18, 2020. The tenant confirmed they received the prepared evidence and notice of this hearing from the landlord.

### 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 s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 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. The agreement was made on April 22, 2013, for an original fixed term of 2 years commencing on July 1, 2013. The Rent at the start was \$5,100 per month. The agreement specifies that the tenant is responsible for the water and sewer usage expense “estimate at \$150.00 per month.” The landlord received a security deposit of \$2,550 on April 22, 2013.

A series of fixed-term tenancy agreements followed through the following years. These ranged from 2 to 12 months, with varying rent amounts shown on subsequent agreements. The final agreement in place was for a six-month term from May 1 to October 31, 2020. This is with the rent amount \$6,100, and a water and sewer fee of \$150. An additionally term on this agreement is that the landlord will offer \$300 rent credit each month from May 1, 2020 through to when the state of emergency is lifted.

The tenancy ended when the landlord applied for an Order of Possession through a separate dispute resolution process. This branch granted the Order and the landlord served this to the tenant. After this on November 27, 2020 the tenant advised of their move-out date for November 30, 2020.

Through that hearing process the landlord obtained a monetary order for \$11,700 for the months of October and November 2020, with these being the only months allowed for recompense after a public order prohibited rent recovery for portions of 2020.

Here, the landlord claims for the months of June, July, August and September when the tenant did not pay rent. For these four months, the rent is \$5,800, for the total of \$23,200. These amounts are shown on a tenant ledger dated to November 26, 2020. For three (June, August, and September) of these amounts, an entry of “NSF payment” shows on the ledger. There is no payment shown for July 2020.

In the hearing the tenant raised an issue of rent increases over the term of the tenancy. They described that these occurred in 2015 and 2016, for substantially more than what is normally legally allowed. They also claimed for a rent amount reduction because the landlord did not provide pool service and garden/yard maintenance as the agreement specifies. The landlord responded to say that these services cost substantial amounts that come from the monthly rent that the tenant would pay; without rent being paid, it just was not possible for these services to continue. The tenant responded to say they

had a hard time accepting this where they are aware the landlord owns a number of different properties.

In the hearing the tenant did admit they did not pay rent for each of the months of June, July, August, and September.

The landlord also claims for compensation of utility amounts owing, for \$4,407.50. This is for the \$150 amount as set out in the tenancy agreement. The balances are set out in a separate ledger provided by the landlord for utilities only.

In the hearing, the tenant stated they “accept the debt of the utility bill.”

The total amount claimed from the landlord and reviewed in the hearing is \$27, 607.50. The landlord applies to offset the \$2,550 security deposit amount against this outstanding amount owing.

### 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* s. 26 requires a tenant to 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 the *Act* to deduct all or a portion of the rent.

I accept the evidence before me that the tenant failed to pay the full amount of rent from June to September 2020. I find the landlord is entitled to an award for the amount claimed: \$23,200.00. The tenant acknowledged they did not pay this rent amount.

The tenant also accepted the amount for utilities owing. I find the landlord is entitled to this amount because it is shown in the ledger and the tenant did not object to any portion of the amounts shown therein. I find the landlord is entitled to the claimed amount here of \$4,407.50.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord withheld the security deposit at the end of the tenancy and legitimately made a claim against it as per s. 38. The landlord has established a claim of \$27,607.50. After setting off the security deposit amount of

\$2,550, there is a balance of \$25,057.50. I am authorizing the landlord to keep the security deposit amount and award the balance of \$25,057.50 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 s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$25,157.50. 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 s. 9.1(1) of the *Act*.

Dated: April 19, 2021

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Residential Tenancy Branch