



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Skyline Living  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the "agent") 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 agent and I were the only ones who had called into this teleconference.

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

The agent provided or confirmed the landlord's email address during the hearing for service of this Decision.

The agent testified that the tenants were each served with this application for dispute resolution via registered mail on February 10, 2020. A Canada Post receipt stating

same was entered into evidence. I find that the tenants were served in accordance with section 89 of the *Act*.

#### Preliminary Issue- End of Tenancy

The agent testified that the tenants moved out of the subject rental property on April 12, 2021. As this tenancy has already ended, I dismiss the landlord's application for an Order of Possession.

#### Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that 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.

The landlord's original application claimed unpaid rent and parking fees in the amount of \$9,270.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$11,445.70.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent and parking fees, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent and parking fees in the amount of \$11,445.70.

I allowed the landlord 24 hours to upload an updated copy of the rent ledger. The landlord did not upload a copy of the rent ledger but rather an updated copy of the landlord's monetary worksheet. I decline to consider this evidence as it was submitted

late, contrary to Residential Tenancy Branch Rule 3.14 and was not the evidence I authorized the agent to submit late, in accordance with Rule 3.19.

### Issue 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 retain the tenants' security deposit, pursuant to section 38 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 agent, not all details of the agent'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 agent provided the following undisputed testimony. This tenancy began on August 31, 2020 and ended on April 12, 2021. Monthly rent in the amount of \$1,500.00 plus a \$45.00 parking fee were payable on the first day of each month. A security deposit of \$749.00 was paid by the tenants to the landlord. The tenants did not provide a forwarding address when they vacated the subject rental property.

The agent testified that the tenants have not paid any rent or parking fees from September 2020 to April 12, 2021 and currently owe \$11,445.70. The agent testified that the landlord is only seeking \$630.70 for rent and parking for the first 12 days of April 2021, not the entire month. The agent did not provide details on how the \$630.70 was calculated other than stating that it was a pro-rated amount for April 1-12, 2021. The agent entered into evidence a rent ledger which confirms that the tenant did not pay any rent from August 31, 2020 to February 2, 2021.

### Analysis

I accept the agent's undisputed testimony that rent was \$1,500.00 per month and parking fees were \$45.00 per month. Based on the rent ledger entered into evidence and the agent's undisputed testimony, I find that the tenant has not paid rent or parking fees from September 2020 to April 2021

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*, I find that the tenants were obligated to pay the monthly rent on the first day of each month. I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and did not pay the landlord the parking fee. I find that the tenants owe the landlord **\$10,815.00** for rent and parking fees from September 2020 to March 2021 (7 months at \$1,545.00 per month). I was not able to replicate the agent's math on the pro-rated claim of \$630.70 for April 1-12, 2021. I find that the landlord is entitled to the pro-rated rent and parking fees for April 1-12, 2021 pursuant to the below calculation:

$$\begin{aligned} &\$1,545.00 \text{ (rent and parking)} / 30 \text{ (days in April)} = \$51.50 \text{ (daily rate)} \\ &\$51.50 \text{ (daily rate)} * 12 \text{ (days in April tenant resided in unit)} = \mathbf{\$618.00} \end{aligned}$$

I accept the agent's undisputed testimony that a forwarding address was not provided by the tenants.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the agent's undisputed testimony that the tenants did not provide a forwarding address.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, 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 or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' security deposit in the amount of \$749.00.

### Conclusion

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

Item	Amount
September – March rent and parking	\$10,815.00
April 1-12, 2021 rent and parking	\$618.00
Filing fee	\$100.00
Less security deposit	-\$749.00
<b>TOTAL</b>	<b>\$10,784.00</b>

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 04, 2021

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Residential Tenancy Branch