



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, FFL

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$8,422.00, and to recover the \$100.00 cost of their Application filing fee.

The Landlord, G.W., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her 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 Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with copies of the Application for Dispute Resolution and the Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents by email sent on January 22, 2021, further to having obtained an Order for substituted service dated January 20, 2021. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and she confirmed these in the hearing. The Landlord also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, the Landlord clarified that the Tenant sometimes goes by her married name, as well as her middle name, although the Landlord said they had neglected to include these in their Application. As a result, I amended the Respondent's name in the Application to include the Tenant's "also known as" or "a.k.a." name, pursuant to section 64(3)(c) and Rule 4.2.

### Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order, and if so, in what amount?
- Are the Landlords entitled to Recovery of the Application filing fee?

### Background and Evidence

The Landlord confirmed the details of the tenancy, as set out in the tenancy agreement, which include that the fixed-term tenancy began on January 1, 2019 and ran to June 30, 2019, and then operated on a month-to-month basis. Under the tenancy agreement, the Tenant was required to pay the Landlords a monthly rent of \$2,100.00, due on the first day of each month. The Landlord confirmed that the Tenant did not pay them a security deposit, nor a pet damage deposit for the tenancy.

The Landlord said that the tenancy ended after she served the Tenant with an Order of Possession posted on the rental unit door on December 15, 2020. The Landlord said she texted the Tenant on December 21, 2020 to ask if she had moved yet, and that the Tenant confirmed on December 24, 2020 that she had vacated the rental unit. The Landlord said that she obtained the Order of Possession from the RTB in another teleconference hearing, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated October 2, 2020.

The Landlord provided background to the situation in the hearing, saying:

[The Tenant] resided in the apartment and in mid-August I received a message saying she was not able to pay rent in August. Her only source of income was child and spousal support, and she indicated that he hadn't paid her. She said

that all she could afford was \$1,400.00. I was out of the country at the time, and I said to pay the \$1,400.00 and we'd discuss it when I get back in September. That was the last payment that she made. There was no money after that point.

When I returned to Canada in September, she hadn't paid September's rent. I explained we have mortgage payments. We needed to be paid in October. On October 2 – we posted the 10 Day Notice to which she filed a dispute. On December 4<sup>th</sup> – no rent on November 1, either - on the 4<sup>th</sup> I asked her if she was intending to not pay. . . . She said all issues would be addressed at arbitration. She acknowledged that she didn't pay the rent – that was not in dispute - so [the arbitrator] issued a decision on the 14<sup>th</sup>, so I served the notice. She moved out somewhere between the 15<sup>th</sup> and December 24<sup>th</sup>, when she finally responded with a text message that she had moved out

The Landlord submitted a monetary order worksheet with the following details, which she confirmed in the hearing. The Landlord said this is a record of the Tenant's failure to pay rent, despite continuing to live in the rental unit.

<b>Date Rent Due</b>	<b>Amt Owing</b>	<b>Amt Received</b>	<b>Amt. Owing</b>
Aug 1/20	\$2,100.00	\$1,400.00	\$700.00
Sep 1/20	\$2,100.00	\$0.00	\$2,100.00
Oct 1/20	\$2,100.00	\$0.00	\$2,100.00
Nov 1/20	\$2,100.00	\$0.00	\$2,100.00
Dec 1/20	\$2,100.00	Pro-rated	\$1,422.00
		<b>SUB-TOTAL</b>	<b>\$8,422.00</b>

When I asked about the figure claimed for December's rent, the Landlord said: "I prorated December, because I didn't know how much I was allowed to charge, since the Tenant didn't live there the entire month."

### 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.

Further, I find the Landlords unnecessarily pro-rated their claim for rent for December 2020. The Landlords were unable to rent the unit out for December, because they did not know when the Tenant would vacate the unit. Accordingly, I find that the Landlords should have and could have claimed the full rent owed to them by the Tenant for December 2020. I find that the Tenant is not prejudiced by this, as she knew how much rent she had failed to pay the Landlords, and therefore, I find the Landlords are eligible for full reimbursement of the rent, as set out in the following monetary order worksheet:

<b>Date Rent Due</b>	<b>Amt Owing</b>	<b>Amt Received</b>	<b>Amt. Owing</b>
Aug 1/20	\$2,100.00	\$1,400.00	\$700.00
Sep 1/20	\$2,100.00	\$0.00	\$2,100.00
Oct 1/20	\$2,100.00	\$0.00	\$2,100.00
Nov 1/20	\$2,100.00	\$0.00	\$2,100.00
Dec 1/20	\$2,100.00	\$0.00	\$2,100.00
		<b>SUB-TOTAL</b>	<b>\$9,100.00</b>

Pursuant to sections 26 and 67 of the Act, I award the Landlords with \$9,100.00 from the Tenant in unpaid rent recovery. Given their success, I also award the Landlords with their \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act.

Pursuant to section 67, I grant the Landlords a Monetary Order of **\$9,200.00** in recovery of the unpaid rent from August through December 2020 for this tenancy, and recovery of the Application filing fee.

### Conclusion

The Landlords’ claim for compensation for unpaid rent against the Tenant is successful. The Landlords have established a monetary claim of \$9,200.00. The Landlords are granted a Monetary Order under section 67 from the Tenant in the amount of **\$9,200.00**.

This Order must be served on the Tenant by the Landlords and may be filed in the

Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 12, 2021

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Residential Tenancy Branch