



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 11, 2021 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Agent for the Landlord appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Agent. I told the Agent they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

At the hearing, the Agent sought to increase the amount requested on the Application due to the strata issuing further fines to the Landlord in relation to the tenancy. The Landlord had not filed an Amendment to the Application as required by rule 4.1 of the Rules. I did not allow the Application to be amended at the hearing given the Tenant was not at the hearing to confirm their understanding that the Landlord would seek further compensation and given this was not a situation where the Tenant should have reasonably anticipated the amendment as contemplated by rule 4.2 of the Rules.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package was emailed to the Tenant March 19, 2021. The Agent testified that they used an email address provided by the Tenant

during the tenancy. The Agent testified that they communicated with the Tenant at the email address used during the tenancy. The Agent had not submitted the email sent to the Tenant March 19, 2021.

The Agent testified that the Landlord's evidence was sent to the Tenant at times prior to the Application being filed. The Agent testified that the Landlord's evidence was left in the mailbox of the rental unit after the Tenant had moved out.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant was served with the hearing package in accordance with section 89(1)(f) of the *Residential Tenancy Act* (the "*Act*") and section 43(2) of the *Residential Tenancy Regulation* (the "*Regulations*"). Pursuant to section 44 of the *Regulations*, the Tenant is deemed to have received the hearing package March 22, 2021. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service of the hearing package.

In relation to the Landlord's evidence, pursuant to rules 3.1 and 3.14 of the Rules, the Landlord was required to serve a copy of their evidence on the Tenant.

It is not sufficient that the Tenant was previously provided copies of the documents submitted as evidence for this hearing. The service requirements ensure a respondent knows what evidence the applicant will rely on at the hearing. It is not the responsibility of a respondent to guess at what documents the applicant will rely on at the hearing based on what documents they have previously received. It is the applicant's responsibility to serve all evidence submitted on the respondent as evidence on the hearing.

In relation to leaving the Landlord's evidence in the mailbox of the rental unit after the Tenant had moved out, the evidence had to be served in accordance with section 88 of the *Act* which states:

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;**
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service provided for in the regulations.

(emphasis added)

I am not satisfied the Landlord's evidence was served on the Tenant in accordance with section 88 of the *Act*.

Given the above, I am not satisfied the Tenant was sufficiently served with the Landlord's evidence. Pursuant to rule 3.17 of the Rules, I exclude the Landlord's evidence as I find it would be unfair to consider evidence that has not been sufficiently served on the Tenant.

Given I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant

evidence and make relevant submissions. I have considered all testimony provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	½ of March rent	\$1,125.00
2	Strata fines	\$1,500.00
3	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,725.00</b>

The Agent testified as follows.

There was a written tenancy agreement between the parties. The tenancy started November 01, 2019 and was for a fixed term ending October 31, 2020. Rent was \$2,250.00 per month due on the first day of each month. The Tenant paid a \$1,125.00 security deposit which the Landlord still holds.

The Tenant vacated the rental unit March 14 or 15, 2021.

The Tenant did not provide a forwarding address to the Landlord.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Tenant did agree in writing at the end of the tenancy that the Landlord could keep the entire security deposit to go towards rent for half of March of 2021.

The parties both participated in a move-in inspection.

The Landlord did a move-out inspection without the Tenant. The Tenant did not respond to communications about doing a move-out inspection. The Landlord did not provide the Tenant a second opportunity to do a move-out inspection on the RTB form.

**#1 ½ of March rent \$1,125.00**

The Tenant provided notice at the end of February ending the tenancy. The Tenant's notice was effective at the end of March. The Tenant paid half of rent for March. The Tenant said the Landlord could keep the security deposit for the other half of March rent.

**#2 Strata fines \$1,500.00**

The Tenant signed a Form K at the outset of the tenancy which indicated that the Tenant was bound by the strata rules. The Tenant was provided a copy of the strata rules. The strata rules mention the issue of short term rentals. The Tenant breached the strata rules in relation to short term rentals and the Landlord incurred \$1,500.00 in fines as a result. The Landlord was unaware that the Tenant was using the rental unit for short term rentals.

Analysis

**Security deposit**

Section 38(4) of the *Act* states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

I accept the undisputed testimony of the Agent that the Tenant agreed in writing at the end of the tenancy that the Landlord could keep the security deposit towards half of March rent. Therefore, the Landlord is entitled to keep the security deposit towards half of March rent pursuant to section 38(4) of the *Act*.

## ***Compensation***

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

**#1 ½ of March rent \$1,125.00**

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I accept the undisputed testimony of the Agent that the Tenant was required to pay \$2,250.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

I accept the undisputed testimony of the Agent that the Tenant gave notice at the end of February ending the tenancy.

I accept that the Tenant's notice was effective at the end of March pursuant to sections 45 and 53 of the *Act*. I am satisfied the Tenant was required to pay rent for March. I accept the undisputed testimony of the Agent that the Tenant paid half of rent for March and did not pay the other half of rent for March and therefore owes the Landlord \$1,125.00 in rent. The Landlord is entitled to \$1,125.00 in unpaid rent.

Further, I accept the undisputed testimony of the Agent that the Tenant agreed in writing at the end of the tenancy that the Landlord could keep the security deposit towards half of March rent and therefore, the Landlord can keep the security deposit towards half of March rent.

**#2 Strata fines \$1,500.00**

I accept the undisputed testimony of the Agent that the Tenant signed a Form K at the start of the tenancy and therefore was bound by the strata rules. I accept the undisputed testimony of the Agent that the Tenant was provided a copy of the strata rules and that these included rules around short term rentals. I accept the undisputed testimony of the Agent that the Tenant breached the strata rules in relation to short term rentals and that this resulted in the Landlord being fined \$1,500.00. I am satisfied the Tenant is responsible to pay for the strata fines caused by their actions pursuant to the Form K and section 7 of the *Act*. The Landlord is entitled to recover the \$1,500.00 sought.

**#3 Filing fee \$100.00**

Given the Landlord was successful in the Application, the Landlord is entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

***Summary***

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	½ of March rent	\$1,125.00
2	Strata fines	\$1,500.00
3	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,725.00</b>

The Landlord can keep the \$1,125.00 security deposit pursuant to section 38(4) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$1,600.00 pursuant to section 67 of the *Act*.

**Conclusion**

The Landlord is entitled to \$2,725.00. The Landlord can keep the \$1,125.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$1,600.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: August 04, 2021

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Residential Tenancy Branch