



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      FFL, OPR, MNRL, MNDCL-S, MNDL-S

### **Introduction**

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$7,531.55 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:29 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. 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 landlord and I were the only ones who had called into this teleconference.

The landlord testified she served that the tenant with the notice of dispute resolution package and supporting documentary evidence on April 21, 2021 via email. She submitted form #RTB-51 "Address for Service" dated March 19, 2021 and signed by the tenant, which indicated that the tenant agreed she could be served via email. As such, I find that the tenant can be served by email, as per sections 43 of the *Residential Tenancy Regulation* (the "**Regulation**"). Per section 44 of the Regulation, I deem the tenant served with the notice of dispute resolution package and supporting documentary evidence on April 24, 2021, three days after it was emailed.

The landlord also served several documents in support of additional claims (more on this shortly) on the tenant on August 11 and 12, 2021. The Rules of Procedure require that an applicant serve all documents no later than 14 days in advance of the hearing. As such, I find these documents to be been served outside the permitted timeframe and are not admissible in this hearing.

### **Preliminary Issue – Additional Claims**

At the hearing, the landlord advised me she was also seeking monetary orders against the tenant as follows:

Description	Amount
Strata penalty incurred by the tenant	\$50.00
Cost of professionally cleaning the rental unit	\$250.00
Cost of repairing holes in the rental unit walls	\$100.00
Cost of removing garbage from the rental unit and storage locker	\$50.00
<b>Total</b>	<b>\$450.00</b>

The landlord did not make an amendment to her application to include these claims. The landlord submitted documents supporting these claims two days prior to the hearing. Accordingly, I do not find that the tenant has adequate notice of these claims, and I decline to allow the landlord's application to be amended at the hearing. Such monetary claims could not have been reasonably anticipated by the tenant.

The landlord may file another claim to recover these amounts.

### **Preliminary Issue – Partial Resolution**

The landlord testified that the tenant vacated the rental unit on or about April 13, 2021. She stated that she no longer requires an order of possession. As such, I dismiss her application for an order of possession, without leave to reapply.

The landlord testified that the tenant's mother has paid her \$4,231.55 in compensation for the damage caused to the front door of the rental unit. Accordingly, the landlord now only seeks a monetary order of \$3,300.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$3,300;
- 2) recover the filing fee; and
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

### **Background and Evidence**

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

The parties entered into a written, fixed term tenancy agreement starting January 1, 2020 and ending May 31, 2021. Monthly rent was \$1,650 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$825 which she holds in trust for the tenant.

The landlord testified that the tenant failed to pay rent for April 2021. She testified that she personally served the tenant with a 10 Day Notice to End Tenancy for Nonpayment of Rent on April 3, 2021 (the “**Notice**”). It specified an effective date of April 13, 2021.

The landlord testified that she offered the tenant three different opportunities to attend a move out inspection via email, proposing times of 2:00 pm, 4:00 pm, and 6:00 pm on April 13, 2021. The tenant did not respond to these emails and did not attend at any of these times.

The landlord testified that she immediately hired a property management company to re-rent the rental unit. She testified that the property management company was able to secure a new tenant in the rental unit, starting March 6, 2021. This tenant paid monthly rent of \$1,690. He paid prorated rent for May 2021, in the amount of \$1,302.

The landlord testified that the property management company charged her a marketing fee of \$262.50 and a “tenant finders fee” of \$674.31. In total the company charged her \$936.81 for securing her a new tenant.

The landlord testified that the tenant did not provide her with a forwarding address when she moved out and has not paid any part of the April 2021 rent.

The landlord seeks a monetary order to recover the unpaid rent, to recover the loss she suffered as a result of not being able to earn the full amount of rent owed to her for May 2021, and to recover the cost of having to engage a property management company to secure a new tenant.

### **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

(the “**Four-Part Test**”)

Section 26(1) of the Act states:

**Rules about payment and non-payment of rent**

**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.

I accept the landlord’s undisputed testimony in its entirety. I find that the tenant was obligated to pay monthly rent of \$1,650 and that her fixed term tenancy ended on May 31, 2021.

As such, I find that by not paying April 2021 rent, the tenant breached the tenancy agreement, causing the landlord to:

- 1) suffer a loss of \$1,650; and
- 2) serve the Notice.

Under the tenancy agreement, the landlord was entitled to collect rent of \$1,650 per month for 12 months. Due to the tenant’s breach of the agreement by failing to pay rent in April, thus necessitating the landlord to issue the Notice, the landlord was unable to collect \$1,650 per month for 12 months from the tenant under the tenancy agreement.

I note that, per section 45 of the Act, a tenant is only able to end a fixed-term tenancy by giving at least one month notice of their intention to do so, and by specifying an effective date that is not earlier than the end of the fixed term (in this case, not earlier than May 31, 2021).

For the foregoing reasons, I find that the landlord has satisfied the first three parts of the Four-Part Test.

However, the landlord has an obligation to act reasonably to minimize her loss. In this case, that means taking reasonable steps to try to rent the rental unit to another tenant for May 2021.

I find that it was reasonable for the landlord to engage a property management company to secure her a new tenant. Such arrangements are relatively common, and many landlords rely on such companies to secure new tenants. I accept that the landlord paid the company \$936.81 and find that this is a reasonable amount for such services. This was money well spent, as the property management company secured a

new tenant in a relatively short period of time and entered into a tenancy agreement whereby the new tenant would pay more in monthly rent than the landlord was receiving previously. I find that the landlord acted reasonably to minimize her loss caused by the tenant's breach of the tenancy agreement.

I find that the landlord suffered a monetary loss as follows:

Description	Amount
April Arrears	\$1,650.00
Loss of opportunity to charge tenant May 2021 rent	\$1,650.00
Cost of securing new tenant	\$936.81
May rent earned from new tenant	-\$1,302.00
<b>Total</b>	<b>\$2,934.81</b>

As such, I order the tenant to pay the landlord this amount.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he/she/they may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

### **Conclusion**

Pursuant to sections 65, 67, and 72 of the Act, I order that the tenant pay the landlord \$2,209.81, representing the following:

Description	Amount
April Arrears	\$1,650.00
Loss of opportunity to charge tenant May 2021 rent	\$1,650.00
Cost of securing new tenant	\$936.81
May rent earned from new tenant	-\$1,302.00
Filing fee	\$100.00
Security deposit credit	-\$825.00
<b>Total</b>	<b>\$2,209.81</b>

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: August 16, 2021

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Residential Tenancy Branch