



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNRL-S FFL

### Introduction

The landlord seeks compensation for unpaid rent, pursuant to sections 26 and 67 of the *Residential Tenancy Act* ("Act"). In addition, they applied to recover the cost of the filing fee, pursuant to section 72 of the Act.

The tenant, her interpreter, and the landlord's agent attend the hearing.

### Preliminary Issue: Service of Evidence

The landlord's agent testified that they served the landlord's evidence on the tenant by registered mail back in May 2021. The tenant testified that they served their evidence on the landlord by way of email on October 18, 2021. The landlord's agent had no knowledge of the service and remarked that the landlord did not mention anything about receiving the tenant's evidence. In the absence of any documentary proof that the landlord received the tenant's evidence, I am unable to find that the tenant served their evidence on the landlord. As such, the small amount of evidence that was submitted by the tenant to the Residential Tenancy Branch will not be accepted or considered.

That said, three of the seven pieces of the tenant's documentary evidence consisted of a copy of the decision and order related to the tenant's previous file. A third document was simply a one-page written submission by the tenant regarding the dispute; much of this was provided by way of oral submission. Last, the three remaining pieces of evidence consisted of WeChat conversations between the tenant and the landlord.

### Issues

1. Is the landlord entitled to compensation for unpaid rent?
2. Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on September 7, 2018 and ended on June 14, 2019 when the tenant vacated the rental unit. It is noted that the tenancy was supposed to end on August 31, 2019. Monthly rent, due on the first day of the month, was \$1,600.00. A copy of the written Residential Tenancy Agreement was in evidence.

It should also be noted that the tenant made an application for the return of their security deposit on October 6, 2020. In a Residential Tenancy Branch decision and order dated January 28, 2021, and later corrected on April 14, 2021, the landlord was ordered to return the tenant's security deposit. The amount to be returned was doubled by the arbitrator, pursuant to section 38(6) of the Act. As such, while the landlord's present application indicates that a claim is being made against the security deposit, the landlord cannot be considered to still be holding that deposit in trust. Even if, as noted by the tenant and her interpreter, the landlord has refused to pay the amount. (The tenant's application file number is referenced on the cover page in this decision.)

In the claim before me, the landlord seeks compensation in the amount of \$1,600.00.

The landlord's agent testified that there were some disagreements between the parties over cooking smells emanating from the rental unit. Apparently, the landlord's then-pregnant daughter (who resided upstairs or otherwise near the rental unit) was particularly sensitive to these smells. There was some discussion between the parties about the tenant moving out. However, nothing came of those discussions.

The tenancy continued, but come June 1st, the tenant failed to pay rent. The landlord testified that they served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on June 2, 2019 on the tenant. A copy of the Notice was in evidence, and it indicated on page one that the tenant failed to pay rent in the amount of \$1,600.00 that was due on June 1, 2019. In addition to a copy of the Notice was a copy of a Proof of Service document and a completed Monetary Order Worksheet. Last, I note that the tenant did not appear to dispute the Notice.

In her defense, the tenant testified that the landlord essentially forced her and her family to move out early. The tenant, through her interpreter, testified that the landlord told the tenant on May 24, 2019 that she “must move out.” The landlord was allegedly aggressive and violent toward the tenant’s two young children. The tenant felt unsafe and uncomfortable and felt that she had no choice but to move out.

In respect of the rent, it is the tenant’s position that she does not owe any rent for June, in light of the landlord’s and the landlord’s daughter’s conduct. They were forced to vacate and as such dispute that they owe any rent for June 2019.

The landlord’s agent briefly provided rebuttal and clarified that, yes, the parties did discuss the tenant’s moving out, but that the tenancy simply continued. It was not until the tenant decided not to pay rent on June 1 that the landlord then issued the Notice.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26(1) of the Act states the following (my emphasis added):

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.

In this dispute, the tenant failed to pay rent that was due under the tenancy agreement. Failing that payment, the landlord subsequently issued the Notice on June 2, 2019. The tenant did not dispute the Notice. Rather, she simply moved out on June 15, 2019.

That the landlord or their daughter may have behaved inappropriately – and it is worth noting that the tenant provided no documentary or eye-witness evidence to support this claim – is insufficient reason for the tenant to simply not pay the rent. Indeed, I am not persuaded by the tenant’s argument that she felt unsafe and uncomfortable in the rental unit, but then decided to stay until the middle of June of 2019.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the

landlord has met the onus of proving their claim for compensation in the amount of \$1,600.00 for the unpaid rent of June 2019.

Finally, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee.

Pursuant to section 67 of the Act, the landlord is awarded a total of \$1,700.00. A monetary order in this amount is issued to the landlord, in conjunction with this decision.

### Conclusion

The landlord's application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 25, 2021

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Residential Tenancy Branch