



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:54 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by agent DS (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.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on May 26, 2021, in accordance with section 89(1)(d) of the Act (the tracking number is recorded on the cover of this decision).

The landlord mailed the package to the forwarding address provided by the tenant via email on April 11, 2021. The email was submitted into evidence.

Section 90 (a) of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it

is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on May 31, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Issues to be Decided

Is the landlord entitled to:

- a monetary order for unpaid rent?
- an authorization to recover the filing fee for this application?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on May 01, 2020 and ended on April 15, 2021. Monthly rent was \$1,350.00, due on the first day of the month. At the outset of the periodic tenancy a security deposit (the deposit) of \$675.00 was collected. The tenancy agreement was submitted into evidence.

The landlord stated he obtained a monetary order for February 2021 rent. The March 24, 2021 decision (the prior decision) states:

Pursuant to sections 67 and 72 of the Act, I grant the landlord a Monetary Order in the amount of \$1,450.00 for rent owed for February 2021 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

The landlord testified he received two payments in the total amount of \$360.00 for March 2021 rent. The landlord is claiming for the balance of March 2021 rent and April 01 to 15, 2021 rent in the total amount of \$1,665.00. The landlord submitted a ledger indicating a payment of \$270.00 on April 07, 2021 and \$90.00 on April 09, 2021.

The landlord submitted into evidence a monetary order worksheet dated May 14, 2021 indicating a monetary claim in the amount of \$1,665.00.

### Analysis

I accept the landlord's convincing uncontested testimony and the tenancy agreement that the tenant agreed to pay monthly rent of \$1,350.00 on the first day of the month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's convincing and undisputed testimony and the monetary order worksheet, I find the tenant is in rental arrears in the amount of \$1,665.00 for the balance of March 2021 and April 01 to 15, 2021 rent (\$1,350.00 per month x 1.5 month subtracted the payment of \$360.00).

I award the landlord \$1,665.00 for unpaid rent.

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

Section 72(2) of the Act states:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
- (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the

monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

I note the prior decision did not authorize the landlord to retain the deposit. Thus, per section 72(2)(b) of the Act, I authorize the landlord to retain the \$675.00 deposit in partial satisfaction of the monetary award issued in this application.

In summary:

Item	Amount \$
Unpaid rent	1,665.00
Filing fee	100.00
Subtotal	1,765.00
Minus deposit	675.00 (subtract)
<b>Total:</b>	<b>1,090.00</b>

#### Conclusion

Pursuant to sections 26, 38 and 72 of the Act, I authorize the landlord to retain the \$675.00 deposit and grant the landlord a monetary order in the amount of \$1,090.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order. Should the tenant 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: November 16, 2021

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Residential Tenancy Branch