



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, OPC, MNRL-S, MNDL-S, MNDCL-S, OPN**

### Introduction

This hearing dealt with an application filed by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order of possession for cause pursuant to sections 47 and 55;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- An order of possession following being served with a tenant’s written notice to end tenancy pursuant to sections 45 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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 attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she personally served the tenant with the Notice of Dispute Resolution Proceedings package on October 28, 2021 and the tenant signed a proof of service document which has been provided to me in the landlord’s evidence. I find the tenant duly served with the Notice of Dispute Resolution Proceedings package on October 28, 2021 in accordance with sections 89 and 90 of the *Act*. This hearing proceeded in the

absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

#### Preliminary Issue

The landlord testified that the tenant moved out of the rental unit on November 3, 2021. An Order of Possession is not longer sought or required.

The landlord testified that there was a previous hearing between the parties on July 30, 2021 whereby the landlord was awarded the amount of \$8,858.23 by settlement agreement. I, the previous arbitrator, reduced the landlord's monetary order and awarded the landlord the right to retain the tenant's security deposit and pet damage deposit and the file number for the previous dispute is recorded on the cover page of this decision. The landlord testified that although she was provided with a copy of the settlement agreement, she was not provided with a copy of the monetary order.

The landlord testified that since the date of the settlement agreement, the tenant has failed to pay rent and damaged the rental unit during the tenancy. The landlord acknowledges that the nature of her application for dispute resolution does not seek compensation for unpaid rent subsequent to the hearing on July 30<sup>th</sup>, or for damages to the rental unit discovered after the tenant moved out. The nature of this application was to collect the previous award of \$8,858.23.

#### Analysis

The tenant vacated the rental unit on November 3, 2021. As such, the landlord does not require an Order of Possession and I dismiss this portion of the landlord's application pursuant to section 62(4) of the *Act*.

In this application, the landlord seeks to collect or enforce a monetary order already awarded at the hearing on July 30, 2021. This application is subject to the doctrine of *res judicata* which bars me from re-weighting the evidence and rendering another decision. *Res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. Former adjudication is analogous to the criminal law concept of double jeopardy. For this reason, the landlord's application seeking monetary compensation based on the unpaid monetary order dated July 30, 2021 is dismissed without leave to reapply. The landlord may enforce the July 30, 2021 monetary order at the Small Claims (Provincial) Court in accordance with section 85 of the *Act* after serving the tenant with a copy of it and waiting for the review period to expire.

The landlord is at liberty to file an application seeking unpaid rent from July 30, 2021 onward and for damages sustained to the rental unit if she so chooses.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed without leave to reapply.

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 19, 2021

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Residential Tenancy Branch