



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Skyline Living  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on June 11, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Lost rent;
- Recovery of the \$100.00 filing fee; and
- Authorization to retain the security deposit against any amounts owed.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 4, 2022, and was attended by the Landlord's agent T.E. (the Agent), who provided affirmed testimony. Neither the Tenants nor an agent for the Tenants attended. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over myself and any other participants and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that pursuant to rule 6.11 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent(s) must be served with a copy of the Application, Notice of Hearing, and the documentary evidence intended to be relied on

at the hearing by the applicant. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Application, the Notice of Hearing, and the documentary evidence before me from the Landlord was sent to each of the Tenants by registered mail on July 6, 2021, at the forwarding address provided by email on June 1, 2021. The Agent provided me with a copy of the email containing the forwarding address, the registered mail tracking numbers for each package, a copy of the registered mail receipt and address tags, and print outs of the delivery confirmation for both packages. The registered mail tracking numbers have been recorded on the cover page of this decision. Further to the above, the Canada Post website confirms that the registered mail packages were sent as described above and signed for by the Tenant D.P. on July 22, 2021, and the Tenant I.A. on July 24, 2021.

Residential Tenancy Branch (Branch) records indicate that the Notice of Dispute Resolution Proceeding Package, which contains the Application and the Notice of Hearing, were emailed to the Landlord at their request, on July 6, 2021, for service by July 9, 2021. Based on the above, I therefore find that the Tenants were deemed served with the Application, the Notice of Hearing, and the documentary evidence before me for consideration from the Landlord, in accordance with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure, on July 11, 2021, five days after the packages were sent by mail, pursuant to section 90(a) of the *Act*. I am also satisfied that actual service was subsequently affected on July 22, 2021, for D.P. and July 24, 2021, for I.A., after the Tenants received a first delivery notice on July 9, 2021, and a final delivery notice on July 15, 2021.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the *Act* and Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application.

#### Issue(s) to be Decided

Is the Landlord entitled to recovery of any lost rent?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

Is the Landlord entitled to retain the security deposit against any amounts owed?

### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed-term tenancy commenced on October 1, 2020, and was set to conclude on September 30, 2021, after which time the tenancy could continue on a month to month basis. The tenancy agreement states that rent in the amount of \$1,490.00 is due on the first day of each month, and that a \$745.00 security deposit was required. At the hearing the Agent confirmed that the security deposit was paid and that the full amount is still held in trust by the Landlord.

The Agent stated that on May 30, 2021, the Tenant(s) attended the office and advised them that they had already vacated the rental unit and would not be continuing the tenancy. The Agent stated that they attempted to schedule a move-out condition inspection with the Tenant(s) on May 30, 2021, and on alternate dates, and that the Tenant(s) declined, stating that they were not willing to complete the inspection that day and would not be returning. As the Tenants had already ended the tenancy and vacated the rental unit without any prior or proper notice, the Agent stated that a move-out condition inspection was completed in their absence the following day on June 1, 2021. The Agent stated that a forwarding address was provided on June 1, 2021, by email, and a copy of the email was provided for my review and consideration. The Agent stated that a move-in condition inspection was also completed at the start of the tenancy in compliance with the *Act* and regulation, and that copies of the move-in and move-out inspection reports were provided to the Tenants as required. Copies of the condition inspection reports were provided for my review and consideration.

The Agent stated that although the Landlord sought two months lost rent in the Application for June and July of 2021, the rental unit was advertised for re-rental shortly after the Landlord received notice that the Tenants had abandoned it, and was ultimately re-rented for July 1, 2021, at \$1,535.00 per month. As a result, the Agent stated that the Landlord is only seeking the \$1,490.00 in lost rent for June 2021, as the Tenants breached their fixed-term tenancy agreement by ending the tenancy early, and without proper notice, leaving the Landlord unable to re-rent the unit for June 1, 2021.

In addition to the lost rent set out above, the Landlord sought recovery of the \$100.00 filing fee and authorization to withhold the \$745.00 security deposit against the amounts owed. The Agent confirmed that there were no previous orders from the Branch in relation to the security deposit, that there were no outstanding monetary orders against

the Tenants at the time the tenancy ended, and that there was no agreement with the Tenants for the Landlord to withhold any amount of the security deposit.

Although the hearing remained open for 24 minutes, neither the Tenants nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

### Analysis

As there is no evidence or testimony before me to the contrary, I accept that a tenancy agreement to which the *Act* applies existed between the Tenants and the Landlord, as stated in the tenancy agreement before me. I also find as fact that the Tenants owed rent in the amount of \$1,490.00 per month, that the Tenants vacated and abandoned the rental unit on or before May 30, 2021, without prior notice or authorization under section 45 or 45.1 of the *Act* to do so, resulting in a loss of June 2021 rent by the Landlord. I am also satisfied that the Landlord mitigated their loss by acting expediently and diligently to advertise the rental unit for re-rental, resulting in its re-rental for July 1, 2021, at an increased monthly rental rate of \$1,535.00.

Residential Tenancy Policy Guideline(Policy Guideline) #3 states that compensation for lost rent is intended to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement and that it will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy. If the Tenants had abided by their fixed term tenancy agreement, I find that the Landlord would have been entitled to \$5,960.00 in rent over the balance of the fixed term (June, July, August, and September of 2021), calculated at \$1,490.00 per month. As the rental unit was re-rented at an increased rental rate, I find that the Landlord received \$4,605.00 in rent over the balance of the Tenants' fixed term, \$0.00 for June 2021, and \$1,535.00 per month in July, August, and September of 2021. As a result, I find the Landlord suffered a loss of rent in the amount of \$1,355.00 as a result of the Tenants' breach of the *Act* and the tenancy agreement. Pursuant to sections 7 and 28 of the *Act* and Policy Guideline #3 and #5, I therefore find that the Landlord is entitled to recovery of \$1,355.00 in lost rent from the Tenants.

Having made this finding, I will now turn to the matter of the security deposit. Section 38 (1) of the *Act* states that except as provided in subsection (3) or (4) (a), of the *Act*, within

15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. As the tenancy ended on or before June 1, 2021, the Tenants' forwarding address was received in writing by email on June 1, 2021, and the Application seeking retention of the Tenant's security deposit for lost rent was filed on June 11, 2021, I therefore find that the Landlord complied with section 38(1) of the *Act*. Based on the Agent's affirmed and undisputed testimony, I find that neither section 38(3) nor section 38(4) of the *Act* apply. As the Landlord's claim against the security deposit is also unrelated to damage to the rental unit, I find that the matter of extinguishment of the Landlord's right to claim against the security deposit for damage is also irrelevant. I therefore find that the full \$745.00 security deposit remains held in trust by the Landlord and may therefore be used to offset any amounts owed by the Tenants to the Landlord, pursuant to section 72(2)(b) of the *Act*.

Finally, as the Landlord was successful in their Application, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of \$710.00, calculated as follows, and I order the Tenants to pay this amount to the Landlord. \$1,355.00 for lost June 2021 rent, plus \$100.00 for recovery of the filing fee, less the \$745.00 security deposit I have authorized the Landlord to retain.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$710.00**. 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.

Pursuant to section 72(2)(b) of the *Act*, the Landlord is also authorized to retain, in full, the Tenants' \$745.00 security deposit.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 5, 2022

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Residential Tenancy Branch