



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

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

- Retention of the Tenant's security deposit;
- Compensation for monetary loss or other money owed;
- Recovery of unpaid/lost rent and unpaid utilities; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by Landlord, who provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord 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 Landlord was asked to refrain from speaking over myself and any other participants, should they appear, and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that pursuant to rule 6.11 of the 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 Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon by the applicant at the hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that on July 12, 2021, they texted the Tenant asking for an email address for the purpose of serving them documentation related to the Application and the Notice of Hearing and that the Tenant provided them an email address for that purpose via reply text message. The Landlord stated that on July 12, 2021, they used that email address to send the Tenant the Notice of Dispute Resolution Proceeding Package, which contains a copy of the Application and the Notice of Hearing. The Landlord stated that they had attempted to upload the text and email, but could not. The Landlord stated that when they called the Residential Tenancy Branch regarding this issue, they were advised to tell the arbitrator at the hearing.

Rule 3.17 of the Rules of Procedures allows for the acceptance of late evidence and states that arbitrators have the discretion to accept late evidence even if it does not meet the criteria set out in rule 3.17, provided that the acceptance of the late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. I determined that accepting corroboratory documentary evidence regarding service of the Notice of Dispute Resolution Proceeding Package, when the Landlord had already provided affirmed and undisputed testimony regarding service of these documents, was not prejudicial to the Tenant or a breach of the principles of natural justice, as I was already within my authority to proceed based solely on the Landlords affirmed and uncontested testimony. However, as the Landlord stated they had now resolved the size and format issues that had prevented them from previously uploading these documents for review, I allowed them to do so during the hearing.

The Landlord submitted a copy of a text message dated July 12, 2021, wherein they asked the Tenant for an email address for the purpose of serving them notice of this dispute resolution proceeding. In the screenshot the Tenant replied with an email address. The Landlord also provided screen shots of an email sent to the Tenant stating that it contained the files for dispute resolution and showing various attachments related to the dispute resolution proceeding.

Based on the above, I am satisfied that the Landlord sent the Notice of Dispute Resolution Proceeding Package to the Tenant at the pre-agreed email address, on July 12, 2021, in compliance with section 89(1)(f) of the *Act* and 43(2) of the regulation. As the Landlord stated that the Tenant did not respond, I therefore deem these documents served on the Tenant on July 15, 2021, pursuant to section 44 of the regulation. Residential Tenancy Branch records show that the Notice of Dispute Resolution Proceeding Package was sent to the Landlord by email, as per their request, on July 9, 2021. As the Landlord sent it to the Tenant by email on July 12, 2021, I therefore find

that the Tenant was served in accordance with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure.

The Landlord stated that the documentary evidence before me, except that noted above as accepted late at the time of the hearing, was sent to the Tenant by email at the Tenant's email address for service at least 14 days prior to the hearing. As there is no evidence before me to the contrary, I find that the Tenant was served with the Landlord's documentary evidence as required by the *Act* and the Rules of Procedure and I therefore accept it for consideration.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. I verified that the hearing information contained in the Notice of Hearing was correct and I note that the Landlord had no difficulty attending the hearing on time using this information. Based on the above, as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, and as the Landlord and I attended the hearing on time and ready to proceed and, I therefore commenced the hearing as scheduled at 1:30 P.M. on January 10, 2022, despite the absence of the Tenant.

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

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

#### Preliminary Matters

At the outset of the hearing I identified that the Landlord's address for service and the rental unit address were the same. The Landlord stated that there are two separate suites at that address, the upper suite, which was occupied by the Tenant, and the lower suite, which is occupied by the Landlord. As there is no evidence before me to the contrary, I accept this as fact. The Application was amended accordingly to show the correct suites for the Tenant and the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to retain the Tenant's security deposit?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of unpaid/lost rent and unpaid utilities?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month to month) tenancy commenced on November 23, 2020, that \$2,100.00 in rent was due on the first day of each month and that a \$1,050.00 security deposit was required. At the hearing the Landlord confirmed that the \$1,050.00 security deposit was paid, the entirety of which they still hold in trust.

The Landlord stated that on May 10, 2021, they contacted the Tenant regarding several issues, such as yard maintenance, and to inquire if the Tenant was moving, as they had received a call for a prospective new landlord for the Tenant. The Landlord stated that the Tenant then advised them via text message that they were ending the tenancy effective May 31, 2021. The Landlord stated that they attempted to have the Tenant provide them with a proper one month written notice, but the Tenant refused, stating that they understood they would be liable for rent if it could not be rented out for June 1, 2021. The Landlord stated that the tenancy ultimately ended on May 31, 2021, and that they received the Tenant's forwarding address in writing via text message on June 12, 2021.

The Landlord stated that both a move-in condition inspection and report were completed with the Tenant at the start of the tenancy and that a copy was provided to the Tenant as required by the *Act* and regulation. The Landlord stated that a condition inspection was also scheduled and agreed to by the Tenant for May 31, 2021, and that although the Tenant attended, they refused to participate, were argumentative and then left before the move-out condition inspection report was finalized and signed. The Landlord stated that the Tenant also acknowledged that they had taken the Landlord's lawnmower and would not be returning it until they received their security deposit back. The Landlord stated that they finished the move-out condition inspection and report, and provided a copy to the Tenant as required.

The Landlord stated that the rental unit was advertised for re-rental expediently but that it ultimately was not re-rented until mid-July of 2021, resulting in lost rent in the amount of \$2,100.00 for June 2021, as the Tenant failed to give proper notice.

The Landlord stated that the Tenant failed to leave the rental unit reasonably clean and undamaged, except for pre-existing damage and reasonable wear and tear. As a result, the Landlord stated that they were required to purchase over \$100.00 in cleaning supplies and clean the rental unit themselves over 4-5 hours, as they could not find anyone to do it quickly. The Landlord stated that the fridge and freezer were not cleaned and had food in them, that there was water damage on the windowsills, that the Tenant had damaged part of the cabinetry housing the sink, that cabinet doorknobs were missing, that the Tenant had failed to clean the kitchen vent or replace burnt out light bulbs, and had painted portions of the rental unit poorly resulting in damage to light switch plates and surrounding walls etc. The Landlord stated that the Tenant also damaged the towel bar, the toilet seat cover, and the trim on the front door. As a result, the Landlord sought \$523.35 for general cleaning supplies and general cleaning costs, damage to the rental unit, carpet cleaning, and the stolen lawnmower. The Landlord submitted photographs, the condition inspection reports, a police report, and a carpet cleaning invoice in support of these claims.

The Landlord stated that the Tenant also owes \$100.68 in outstanding utilities, and copies of the relevant utility bills were provided for my review and consideration. The Landlord stated that the utility bills were split 50/50 and therefore they are seeking recovery of only half of the amounts shown. Finally, the Agent sought recovery of the \$100.00 filing fee paid for the Application.

Although the teleconference remained open for 58 minutes, no one called in on behalf of the Tenant to provide any evidence or testimony for my consideration.

### Analysis

As there is no evidence to the contrary, I find that a tenancy agreement to which the *Act* applies existed between the parties, the terms of which are set out in the tenancy agreement before me for consideration, as summarized above.

Based on the Landlord's uncontested documentary evidence and affirmed testimony, I am satisfied that the Tenant owes \$100.68 in outstanding utilities and I award the Landlord recovery of this amount.

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. As a result, I find that the earliest the Tenant was entitled to end the tenancy under section 45(1) of the *Act* by giving notice on May 10, 2021, was June 30, 2021, and only if they gave proper written notice as required by section 52 of the *Act*. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and that the party who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

I accept the Landlord's affirmed and uncontested testimony that they posted the rental unit for re-rental expediently and that despite their best efforts, it could not be re-rented until mid-July 2021. I am satisfied that the Tenant breached section 45(1) of the *Act* when they failed to give adequate notice to end their tenancy, as well as section 52 of the *Act* when they failed to give notice in the proper format. As I am satisfied that the Landlord acted reasonably to mitigate their loss by advertising the rental for re-rental, and that the Landlord suffered a loss of rental income for the month of June 2021 in the amount of \$2,100.00 due to the Tenant's breach of sections 45(1) and 52 of the *Act*, I therefore award the Landlord the \$2,100.00 sought for lost rent.

Based on the uncontested and affirmed documentary evidence before me for consideration, which includes condition inspection reports, a police file number/report, invoices, and photographs, I am also satisfied that the Tenant failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for pre-existing damage and reasonable wear and tear, as required by section 37(2)(a) of the *Act*, and that the Tenant took the Landlord's lawnmower without their consent. I am satisfied that the Landlord suffered a loss in the amount of \$523.35 as a result, and that they mitigated this loss by doing the cleaning and repairs themselves at a reasonably economic rate and attempting to have the Landlord return the Lawnmower and filing a police report regarding its theft. As a result, I award the Landlord recovery of these costs. As the Landlord was successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Having made these findings, I will now turn to the matter of the security deposit. As there is no evidence before me that the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act*, I find that they did not. I accept

the Landlord's testimony that the Tenant's forwarding address was received in writing on June 12, 2021, and as I am satisfied that the tenancy ended on May 31, 2021, and the Application seeking retention of the Tenant's security deposit was filed on June 15, 2021, I find that the Landlord complied with section 38(1) of the *Act*. Pursuant to section 72(2)(b) of the *Act*, I therefore authorize the Landlord to retain the \$1,050.00 security deposit in partial repayment of the above owed amounts. Pursuant to section 67 of the *Act*, I also award the Landlord a Monetary Order for the balance owed, in the amount of \$1,774.02, and I order the Tenant to pay this amount to the Landlord.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$1,774.02**. 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 is also authorized to retain the \$1,050.00 security deposit.

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: January 10, 2022

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Residential Tenancy Branch