



# 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

The Landlord seeks an order for monetary compensation pursuant to s 67 of the *Residential Tenancy Act* (the “*Act*”) for losses incurred and unpaid rent. The Landlord also seeks return of his filing fee pursuant to s. 72.

R.K. appeared on his own behalf as Landlord. S.D. appeared as counsel for the Landlord. The Tenant did not attend the hearing, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled. As the Tenant did not attend the hearing, the hearing was conducted in their absence as provided for under Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The participants confirmed that they were not recording the hearing.

The Landlord advised that the Notice of Dispute Resolution was served by way of registered mail sent on July 26, 2021 and email sent on July 26, 2021. The registered mail package required a signature and the Landlord provides a form indicating that the Tenant signed for the Notice of Dispute Resolution on July 27, 2021. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act* and was received by the Tenant on July 27, 2021.

The Landlord says that the evidence for his application was served by way of registered mail sent on December 23, 2021 to the forwarding address provided by the Tenant. The Landlord says the registered mail packages were never retrieved by the Tenant, which prompted the Landlord to send their evidence by way of email on January 4, 2022. The Landlord says that they sent the evidence to the email provided by the Tenant, which is

evidenced by a copy of a text message dated September 23, 2021. I find that the Landlord's evidence was served in accordance with s. 89 of the *Act* when it was sent by way of registered mail on December 23, 2021. Policy Guideline 12 is clear that the failure of a party to accept or retrieve a package served via registered mail does not affect the deeming provisions of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's evidence on December 28, 2021. To the extent that it is necessary, I further find that pursuant to s. 71(2) of the *Act* the Landlord's evidence was sufficiently served with on the Tenant by way of email sent on January 4, 2022 to the email address provided by the Tenant.

### Issue(s) to be Decided

- 1) Is the Landlord entitled to compensation for unpaid rent?
- 2) Is the Landlord entitled to claim for damages against the security deposit?
- 3) Is the Landlord entitled to return of their filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord provides a copy of the tenancy agreement which indicates the Tenant took up occupancy of the rental unit on October 1, 2018. The Landlord confirmed that the tenancy ended by way of mutual agreement on August 1, 2021, with the tenancy being the subject matter of a separate dispute before the Residential Tenancy Branch. Prior to the end of the tenancy, the Landlord confirmed that monthly rent was \$2,050.00, due on the first day of the month. The Landlord further confirmed holding a security deposit of \$1,000.00 in trust for the Tenant.

The Landlord indicates that the Tenant failed to pay rent for the months of April, May, June, and July of 2021 and seeks unpaid for those months. The Landlord provides a history of payments received by the Tenant for rent showing that the last rent payment he received was on March 5, 2021.

The Landlord further seeks compensation for the removal of certain items left at the rental unit by the Tenant after the end of the tenancy. Photographs were provided by the Landlord of the items. The Landlord further made requests to the Tenant on three

occasions to retrieve the items, with those occasions being on August 3, 15, and September 28, 2021. On September 28, 2021, the Landlord provided the Tenant until October 4, 2021 to retrieve the items or the Landlord would dispose of them. The Landlord did, in the end, dispose of the items and provides a receipt and proof of payment indicating that the cost for the disposal was \$578.00. The Landlord seeks compensation for this amount.

Finally, the Landlord seeks compensation for a fine of \$175.00 that was paid by the Landlord due to bylaw infraction which is argued to have been caused by the Tenant. The Landlord received a letter on May 14, 2019 from the municipality stating that a warning notice was posted to the door at the residential property on May 7, 2019 and cited bylaw infractions due to the length of grass and the storage of items outside. A text message provided by Landlord shows that they had to pay \$175.00. The Landlord confirms having paid this amount to the municipality and seeks compensation for this payment from the Tenant.

During the final inspection, the Landlord says there was an argument between the parties, which resulted in the tearing of the inspection form. Images of the torn inspection form were provided by the Landlord. The Landlord indicates that he received the Tenant's forwarding address by way of text message sent on September 24, 2021. The text message is not within the evidence provided by the Landlord.

### Analysis

The Landlord seeks compensation unpaid rent and claims damages against the security deposit.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

I accept the Landlord's evidence with respect to unpaid rent, which clearly demonstrates that the Tenant was paying rent of \$2,050.00 and that the last payment received by the Landlord was on March 5, 2021. The Tenant's failure to pay rent is in breach of their obligations under the tenancy agreement and s. 26 of the *Act*. I further accept that the Tenant vacated the rental unit on August 1, 2021 as provided for in the parties' agreement to end the tenancy that was the subject matter of the parties' previous dispute before the Residential Tenancy Branch. Given this, I find that the Tenant failed to pay rent of \$2,050.00 in rent on the first of the month for April, May, June, and July of 2021. I grant this portion of the Landlord's claim in the total amount of \$8,200.00.

With respect to the other aspects of the Landlord's claim, I note that the original application was for \$8,200.00, which represents the total amount for the months of unpaid rent. Further, the Landlord's application was made on July 12, 2021, which predates the damages they say they incurred for the removal of the Tenant's personal belongings.

As set out under Rule 2.2 of the Rules of Procedure, a claim is limited to what is stated in the application. The Landlord did not file an amendment to revise their claim in advance of the hearing. An application may be amended at the hearing under limited circumstances, however, the Landlord did not ask me to do so.

Under the circumstances, I decline to make an order for compensation related to the costs of removing the Tenant's items from the residential property and the fine infraction on the basis that these claims were not properly before me and the Tenant did not have proper notice of these claims in the pleadings. If the Landlord wishes to claim these amounts, he must seek that relief by applying for it as per the Rules of Procedure.

The Landlord has established a monetary claim of \$8,200.00 representing total unpaid rent. As the Landlord was successful in his application, the Tenant shall pay the Landlord's filing fee of \$100.00.

Further, I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the security deposit of \$1,000.00 in partial satisfaction of the total amount owed by the Tenant.

Conclusion

The Landlord has established their claim for unpaid rent in the amount of \$8,200.00. I decline to grant the Landlord's claim for payment of a fine and the cost of removing the Tenant's personal belongings at the end of the tenancy on the basis that the Landlord did not apply for that relief and failed to amend their application to reflect these amounts. If the Landlord wishes to claim these amounts, he must apply for them.

Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's filing fee. Further, I order under s. 72(2) of the *Act* that the Landlord retain the security deposit of \$1,000.00 in partial satisfaction of the total amount owed by the Tenant.

I make a monetary order in favour of the Landlord taking the following into account:

Item	Amount
Total unpaid rent	\$8,200.00
Landlord's filing fee pursuant to s. 72(1)	\$100.00
Less the security deposit to be retained by the Landlord as provided by s. 72(2)	-\$1,000.00
<b>TOTAL</b>	<b>\$7,300.00</b>

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$7,300.00** to the Landlord.

It is the Landlord's obligation to serve this order on the Tenant. If the Tenant does not comply with the monetary portion of this order, it may be filed with 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: January 19, 2022

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Residential Tenancy Branch