



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MNRL-S, MNDCL-S, FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$4,656.30 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:56 pm in order to enable the tenants to call into the hearing scheduled to start at 1:30 pm. The landlord's property manager ("**SD**") 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 Dispute Resolution Proceeding. I used the teleconference system to confirm that SD and I were the only ones who had called into the hearing.

SD testified she served that each tenant with the notice of dispute resolution package and supporting documentary evidence via registered mail on September 2, 2021. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. She testified that these packages were sent to the tenants' forwarding address which was provided to the landlord at the end of the tenancy. I find that the tenants are deemed served with these documents on September 7, 2021, five days after SD mailed them, in accordance with sections 88, 89, and 90 of the Act.

### **Preliminary Issue – Reduction of Landlord's Monetary Claim**

At the outset of the hearing, SD advised me that the landlord was seeking to reduce its claim for unpaid rent from \$4,512.50 to \$2,267.38 and its claim for loss due to the tenant's breach of the Act from \$143.80 to \$50.00. As this reduction is solely to the benefit of the tenants, I will permit such an amendment, despite the fact the landlord has not given the tenants notice of the amendment prior to the hearing.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$2,317.88;
- 2) recover the filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of SD, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of SD's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting April 1, 2021 and ending May 31, 2022. Monthly rent is \$1,805 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$902.50, which the landlord continues to hold in trust for the tenants. The parties conducted a move in condition inspection at the start of the tenancy. The landlord submitted a copy of the report into evidence.

The tenancy agreement permits the landlord to charge the tenants and NSF fee of \$25 for any "dishonored payment".

On July 2, 2021, the tenants gave the landlord notice of their intention to vacate the rental unit as above July 31, 2021. However, the tenants did not vacate the rental unit on July 31, 2021. On August 4, 2021, the landlord sent the tenants a letter stating that they had received the tenants' notice to vacate but noted that the date specified was before the end of the fixed term (March 31, 2022). The landlord indicated that the tenants would be in breach of the tenancy agreement should they move out prior to the end of the fixed term.

Despite this, the tenants vacated the rental unit on August 11, 2021. The parties conducted a move out condition inspection on that same date. The tenants provided their forwarding address on the move out condition inspection report.

The landlord filed this application claiming against the security deposit on August 12, 2021.

SD testified that as soon as the tenants moved out, landlord started marketing the rental unit for re rent. She testified that the landlord secured a new occupant for the rental unit starting August 24, 2021. This occupant paid the landlord \$504.99 in rent for August 24 to August 31, 2021 (a prorated amount based on a new monthly rent of \$1,920).

SD testified that each tenant provided the landlord with preauthorization to make withdrawals for rent from their chequing accounts in the amount of \$902.50 on the first

day of each month. She testified that, on July 1, 2021, one of the withdrawals was not completed due to insufficient funds. As such, landlord only received half a month rent from the tenants for July 2021.

The tenants did not pay the landlord any rent for August 2021. Landlord seeks rent from the tenant on a prorated basis in the amount of \$1364.88 (rent owed for August 1 to 23, 2021).

The landlord also claims two NSF fees (for July and August 2021) in the amount of \$25 each. SD stated that the landlord was entitled to charge these fees pursuant to the tenancy agreement and because the preauthorized payment for July 2021 failed and because the tenants paid no rent for August 2021.

### **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenants are required to pay monthly rent in the amount of \$1,805 on the first day of each month. Based on the uncontroverted testimony of SD and the documentary evidence provided in support of the application, I find that the tenants only paid \$902.50 for July 2021 and did not pay any rent for August 2021. Failure to pay rent when it is due is a breach of the act and of the tenancy agreement.

As a result of the tenants' failure to pay the full amount of rent for July 2021, I find that the landlord suffered a monetary loss equal to the unpaid amount (\$902.50). I order that the tenants pay the landlord this amount.

The tenants are not permitted to end the tenancy agreement prior to the end of its fixed term. Ending the tenancy agreement prior to the end date amounts to a breach the tenancy agreement. The landlord was entitled to generate \$1,805 from the rental unit for August 2021. The landlord generated \$504.99 in revenue from the rental unit (the

prorated amount of rent paid by the new occupant). As such, the loss caused to the landlord by the tenants' breach is \$1,300.01 (\$1,805.00 - \$504.99). I do not find it appropriate to order that the tenants pay an amount greater than this based on their prorated rent ( $\$1805 / 31 \text{ days} = \$58.23$ ;  $\$58.23 \times 23 \text{ days} = \$1,339.29$ ). As this would put the landlord in a better position than they otherwise would have been had the tenants not breached the tenancy agreement. I order that the tenants pay the landlord \$1,300.01 as compensation for damages they caused the landlord by vacating the rental unit prior to the end of the fixed term.

I also ordered that the tenants pay the landlord \$50 representing the payment of two NSF fees which are payable pursuant to the tenancy agreement due to incomplete and non-payment of July and August 2021 rent respectively.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

### **Conclusion**

Pursuant to sections 65, 67, and 72 of the Act, I order that the tenants pay the landlord \$1,450.01, representing the following:

Description	Amount
Unpaid rent (July)	\$902.50
Loss of revenue (August)	\$1,300.01
NSF fees	\$50.00
Filing fee	\$100.00
Deposit credit	-\$902.50
<b>Total</b>	<b>\$1,450.01</b>

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: February 25, 2022

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Residential Tenancy Branch