



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

The Landlord claims against the security deposit for unpaid rent pursuant to s. 67 of the *Residential Tenancy Act* (the “*Act*”) and for the return of their filing fee pursuant to s. 72.

J.G. appeared as agent for the Landlord. S.S. appeared as property manager for the Landlord. D.R. and Y.Z. appeared as Tenants.

The parties 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 parties confirmed that they were not recording the hearing.

The Landlord’s agent advised that the Tenants were served with the Notice of Dispute Resolution and the Landlord’s evidence by way of registered mail sent on September 1, 2021. The Tenants acknowledge receipt of the same. I find that the Landlord’s application materials were served on the Tenants in accordance with s. 89 of the *Act*.

The Tenants indicate that the Landlord was served with their responding evidence by personally delivering it to their office on February 18, 2021. The Landlord acknowledges receipt of the Tenants responding evidence. I find that the Tenants’ responding evidence was served on the Landlord in accordance with s. 89 of the *Act*.

### Issue(s) to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent? If so, in what amount?
- 2) Is the Landlord entitled to the 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 parties confirmed the following details with respect to the tenancy:

- The Tenants took up occupancy of the rental unit on January 1, 2006;
- The Tenants moved-out of the rental unit on August 3, 2021;
- At the end of the tenancy, rent of \$2,367.00 was due on the first day of each month; and
- The Landlord holds a security deposit of \$895.00 in trust for the Tenants.

A copy of the written tenancy agreement was put into evidence

The Tenants provided their forwarding address to the Landlord during the move-out inspection that was conducted on August 3, 2021.

The parties explained that the present dispute originates from an issue with the amount of additional fees that were to be paid by the Tenants under the tenancy agreement.

The Landlord claims that the Tenants were obliged to pay the following fees:

- Parking Stall #1: \$30.00
- Parking Stall #2: \$30.00
- Boat Parking: \$150.00
- Storage Locker: \$45.00

The total amount for the additional fees that were to be paid by the Tenants was \$255.00 per month.

The Landlord's agent indicated that the present Landlord purchased the property in February 2020 and that they inherited the additional fee structure as set out above. When asked whether these fees were imposed in the tenancy agreement or its addendums, the Landlord's agent admits that they do not. The Landlord's agent points to the Tenants payments of these amounts to the previous landlord as proof that they are correct.

According to the Landlord, the Tenants stopped paying the total of \$255.00 in May 2020 and began to pay a lesser amount. The Landlord calculates total arrears from the

underpayment from May 2020 until August 2021 to be in the amount of \$2,340.00. The Landlord provides a copy of the Tenants rent ledger.

The Tenants admit that they have not paid the total fees claimed by the Landlord. However, they indicate that the fee payment was a matter of dispute with the previous landlord. They indicate that back in 2007 their total fees were as follows:

- Parking Stall #1: \$20.00
- Parking Stall #2: \$20.00
- Boat Parking: \$45.00
- Storage Locker: \$35.00

A notice of rent increase from 2008 provided by the Tenants evidence these amounts. The Tenants confirmed that the amount to be paid for the fees were not in any written document and were agreed to orally with the previous landlord.

The Tenants say they continued to pay their fees as listed above until 2016, after which point the previous landlord increased their fees, which they argue was without their consent. The fees were raised to the amount listed by the Landlord in their application.

The Tenants advised that there was a dispute with the previous landlord regarding the fee increase in 2016. The Tenants say that they filed an application with the Residential Tenancy Branch to dispute the fee increase, with that application scheduled to come on for hearing in May 2016. The Tenants advise that during that dispute, they received a letter from the previous landlord's lawyer in which they threatened to issue a 10-Day Notice to End Tenancy if they did not pay the increased amount and chose to dispute the fee increase. The Tenants say they withdrew their application in 2016 for fear of losing their home and paid the increased amount. The Tenants emphasized that they paid the increased fees in protest and highlight letters to that effect sent to the previous landlord.

The Tenants say that when the new Landlord took over in the spring of 2020, they felt it was an opportunity to address a wrong that was committed by the previous landlord. They indicate that they discussed this with the resident property manager, who told them to pay the lesser amount while the matter was being considered by the new Landlord. The Tenants say that after this conversation, they began to pay \$120.00 to the Landlord for their fees in May 2020.

The Tenants indicate that they have reviewed the rent ledger provided by the Landlord and admit that it is accurate insofar it demonstrates how much they paid to the Landlord over the relevant period. The Tenants admit they failed to make payment for their fees at all for the months of June and September of 2020. They dispute the amount of fees that were to be charged as listed in the ledger.

The Tenants make further argument that the parkade was closed from January 2020 until April 2020 and seek to offset their claim on the basis that they were paying for fees that should not have been charged in any event. The Landlord indicates that those affected by the closure were offered alternate parking stalls. The Tenant has not filed an application advancing a monetary claim.

### Analysis

The Landlord claims against the security deposit for unpaid rent.

I find that the Landlord filed their application within the 15-day window as required by s. 38(1) of the *Act*. The tenancy ended on August 3, 2021 and the Tenants provided their forwarding address on the same date. After review of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed their application on August 13, 2021, which is when they paid their filing fee and filed their application.

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.

The written tenancy agreement in the present circumstances is silent with respect to the parking fees and there is no addendum defining the Tenant's obligations. However, the

Tenant had an oral agreement that started with the previous landlord respecting the fees to be paid for parking and storage. This point is not disputed by the parties, only the amount of fees that were to be paid.

The question is whether the tenancy agreement, which has both written and oral components, imposed an obligation to pay fees in the amount alleged by the Landlord or the Tenants. I accept the Tenants evidence that there was a dispute with the previous landlord in 2016 respecting the fees and that they filed an application to dispute the fee increase at that time. I further accept that the Tenants withdrew their application after receiving a letter from the previous landlord's lawyer. That letter was not put into evidence. However, as described by the Tenants, I accept that the letter indicated the previous landlord would issue a 10-Day Notice for unpaid rent if the Tenants refused to pay the increased amount.

I accept that the previous landlord's practice as described by the Tenants with respect to the fee increase in 2016 was likely inappropriate. Fees charged in a tenancy agreement are not strictly rent and are not subject to the rent increase limits imposed by the *Act* and the Regulations. Their increases are subject to the law of contract, which would require a clear agreement between parties with respect to their increase. The arbitrary imposition of increased fees by a landlord, without the consent of the tenant, would be inappropriate.

Here, however, the Tenants have demonstrated that though they disputed the increase in the fees in 2016, they acquiesced to the previous landlord's fee increase. The Tenants had filed an application with the Residential Tenancy Branch and withdrew that application after receiving a letter from the previous landlord's lawyer, which they felt was threatening. I do not have the letter before me. However, the letter as explained by the Tenants was nothing more than the threat of the previous landlord to assert their legal right to issue a 10-Day Notice under the *Act*. The mere issuance of a 10-Day Notice does not automatically result in the end of the tenancy as these notices are routinely disputed by tenants, which would have been an option for the Tenants had a 10-Day Notice been issued.

Rather than proceed with the dispute process, the Tenants instead chose to pay the increased amount and continued to pay that amount until May 2020. The Tenants conduct indicates that they in fact agreed to the fee increase such that in 2016 the oral agreement with respect to the fee charges were increased. The Tenants issued letters that the fees were paid in protest. However, the Tenants had the opportunity to pursue

their arguments in 2016 and elected not to do so. The Tenants provide no evidence that their acquiescence was obtained by inappropriate coercion or duress and their letters indicating that fees were paid in protest does not indicate that the Tenants had not agreed through their conduct to the fee increase.

The Tenants only stopped paying the increased amount in the spring of 2020 after the present Landlord took over as they felt it was their opportunity to address a wrong. Just as a landlord cannot impose increased fees unilaterally, a tenant cannot impose decreased fees unilaterally. The tenancy agreement's oral terms regarding payment of parking and storage fees were amended in 2016 by clear conduct of the parties. This cannot be undone without the consent of the Landlord.

I find that the fees payable under the tenancy agreement, effective as of May 2016 to present, are as follows:

- Parking Stall #1: \$30.00
- Parking Stall #2: \$30.00
- Boat Parking: \$150.00
- Storage Locker: \$45.00

The Tenants admits to not paying the full amount from May 2020 until the end of the tenancy. The Tenants say they stopped in May 2020 as the resident property manager told them to do so. There is no evidence to support this position as it was denied by the Landlord's agent at the hearing.

The Tenants confirmed the information set out in the ledger provided by the Landlord is an accurate reflection of their payment history. The rent ledger confirms that the Tenants were in arrears in the total amount of \$2,340.00 as of August 1, 2021.

I find that the Landlord has demonstrated that the Tenant failed to pay fees as per the tenancy agreement and that failure resulted in financial loss. I further find that the Landlord has quantified their claim in the amount of \$2,340.00 based on the rent ledger, which was not disputed by the Tenant.

The Tenants raised claims for compensation in their submissions. The Tenants have not filed an application claiming any amount with respect to the alleged closure of the parking facilities. As the claim is not before me, I need not consider the Tenants submissions with respect to this point. The Tenants are free to file an application with the Residential Tenancy Branch to claim these amounts if they choose to do so.

As the Landlord's application was successful, I find that they are entitled to the return of their filing fee. Pursuant to s. 71(2) of the *Act*, I order that the Tenants pay the Landlord \$100.00 for their filing fee.

The parties confirmed that the security deposit was paid to the Landlord in the amount of \$895.00. The tenancy agreement indicates that this was paid on December 8, 2005. Including interest, the total amount held in trust by the Landlord is \$926.67. Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit and interest in partial satisfaction of their monetary claim.

Taking the above amounts into account, the total compensation order is made as follows:

Item	Amount
Unpaid fees from May 2020 to August 2021	\$2,340.00
Filing fee to be paid by the Tenants	\$100.00
Less security deposit and interest to be retained by Landlord	-\$926.67
<b>Total</b>	<b>\$1,513.33</b>

### Conclusion

I find that the Landlord's have demonstrated their monetary claim and are entitled to their filing fee and to retain the security deposit, with interest, in partial satisfaction of their claim. Taking these amounts into account, I order pursuant to s. 67 of the *Act* that the Tenants pay **\$1,513.33** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord 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: March 01, 2022

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Residential Tenancy Branch