



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security deposit (the deposit), under section 38;
- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:24 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. Landlords HQ (the landlord) and LY attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was assisted by agent MM. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his witness, his agent, and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on November 22, 2021, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on November 27, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

#### Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord informed me the tenants vacated the rental unit on March 04, 2022. The landlord has possession of the rental unit.

The application for an order of possession is moot since the tenancy has ended and the tenants left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

#### Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$330.00 in unpaid rent to include an additional \$8,520.00 for the unpaid rent of December 2021, January, February and March 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$8,850.00.

#### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained

rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on September 01, 2021 and ended on March 04, 2022. Monthly rent was \$2,130.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,065.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates monthly rent is \$2,100.00 and "extra space \$30/month".

The landlord affirmed the tenant agreed to pay an extra \$30.00 for storage space, thus the monthly rent was \$2,130.00 and the security deposit was \$1,065.00.

The landlord is claiming a monetary order for unpaid rent in the amount of \$8,850.00

The landlord affirmed he received rent in the amount of \$1,800.00 in November 2021. The landlord served the Notice by attaching it to the rental unit's front door on November 04, 2021. A copy of the Notice was submitted into evidence. It is dated November 04, 2021 and it indicates the tenants failed to pay \$330.00 due on November 01, 2021. The effective date was November 15, 2021.

The landlord affirmed the tenants have not paid the balance November 2021 rent in the amount of \$330.00 and December 2021, January, February and March 2022 rent.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Based on the landlord's convincing testimony, I find the landlord served the Notice on November 04, 2021, in accordance with section 88(g) of the Act. The tenants are deemed to have received the Notice on November 07, 2021, in accordance with section 90(c) of the Act.

Section 46(5) of the Act states:

- If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

Section 46(5) of the Act is mandatory, and I have no discretion as to its application. The tenants did not dispute the Notice.

Pursuant to section 53(2) of the Act, the effective date of the Notice is corrected to November 17, 2021. Otherwise, I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the grounds to end tenancy and is in the approved form.

Based on the above, I find the tenancy ended on November 17, 2021, per section 44(1)(a)(ii) of the Act.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Section 57(3) of the Act states: "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended."

I accept the landlord's uncontested testimony and the tenancy agreement that the tenants must pay monthly rent of \$2,130.00 on the first day of the month and that the tenants did not pay the balance of November 2021 in the amount of \$330.00 and did not pay December 2021, January, February and March 2022 rent.

Per section 57(3) of the Act, I award the landlord compensation for overholding tenant for the balance of November 2021 in the amount of \$330.00; \$2,130.00 per month for December 2021, January and February 2022 and \$284.00 for March 01-04 2022 (\$2,130.00 / 30 x 4 days).

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$1,065.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Overholding November 2021	330.00
Overholding December 2021	2,130.00
Overholding January 2022	2,130.00
Overholding February 2022	2,130.00
Overholding March 2022	284.00
Filing fee	100.00
Subtotal	7,104.00
Deposit	1,065.00 (minus)
<b>Total:</b>	<b>6,039.00</b>

### Conclusion

Per sections 57(3), 67 and 72 of the Act, I authorize the landlord to retain the \$1,065.00 deposit and award the landlord \$6,039.00. The landlord is provided with this order in the above terms and the tenants must be served with this order as soon as possible. Should the tenants 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.

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 10, 2022

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Residential Tenancy Branch