



# 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 the following relief under the *Residential Tenancy Act* (the “Act”):

- A monetary order for unpaid rent pursuant to s. 67;
- A monetary order for compensation for loss pursuant to s. 67; and
- Return of its filing fee pursuant to s. 72.

The Landlord’s makes its claims under s. 67 against the Tenants’ security deposit.

R.N. appeared as agent for the Landlord. The Tenants did not appear, nor did anyone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord’s agent 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 Landlord’s agent confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the Notice of Dispute Resolution and Landlord’s evidence was served on the Tenants’ by way of registered mail sent on September 22, 2022. The Landlord’s agent indicates the registered mail packages were sent to the forwarding address the Tenant’s provided. The Landlord includes tracking information indicating that the Tenant’s received the Landlord’s application materials on September 26, 2022. I find that the Landlord served the application materials on the Tenants in accordance with s. 89 of the *Act* by sending it via registered mail to their forwarding

address on September 22, 2022. I accept the Landlord's evidence that the Tenants signed to receive the application materials on September 26, 2022, which is the date I find it was received by the Tenants.

I note that this matter was rescheduled by the Residential Tenancy Branch and that a notice for the rescheduled hearing was sent to the Tenants directly by the Residential Tenancy Branch.

#### Issue(s) to be Decided

- 1) Is the Landlord entitled to a monetary order for unpaid rent? If so, in what amount?
- 2) Is the Landlord entitled to a monetary order for compensation? If so, in what amount?
- 3) 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 Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on April 1, 2020.
- The Landlord obtained vacant possession of the rental unit on August 31, 2021.
- Rent of \$1,450.00 was due on the first day of each month.
- A security deposit of \$725.00 was due on the first day of each month.

A written tenancy agreement was put into evidence by the Landlord confirming these details. The tenancy agreement lists the Landlord differently as stated in the application. The Landlord's agent advised that the property was recently purchased by the current Landlord and that the proper Landlord is as listed in the Notice of Dispute Resolution.

The Landlord's agent advised that the Tenants also paid a \$25.00 parking fee each month but was unable to locate that in the tenancy agreement and advised that it was in a separate addendum, which was not put into evidence. The Landlord's agent directed me to the rent ledger put into evidence to show that the \$25.00 parking had been paid by the Tenants in previous months.

The Landlord's agent further advised that clause 10 of the tenancy agreement imposes a \$25.00 fee when rent is paid late, returned, or insufficient funds are present to deposit cheques.

The Landlord's agent indicated that the tenancy ended by way of notice from the Tenants. The Landlord puts a notice to vacate signed by the Tenants on July 1, 2021 indicating the rental unit would be vacated on August 31, 2021. A mutual agreement to end tenancy in form RTB-8 was also signed by the Tenants and put into evidence by the Landlord.

The Landlord's agent advised that the Tenants failed to pay rent and the parking fee for the months July and August 2021. The Landlord's agent indicated this was shown in the Landlord's rent ledger.

The Landlord also seeks the \$25.00 fees imposed by clause 10 for the months of July and August 2021 as well as the month of February 2021. Again, I was directed to the rent ledger to support these claims.

The Landlord's agent advised that a move-out inspection had been conducted on August 3, 2021, which is the same date the Tenants provided the Landlord with their forwarding address. The Landlord's agent further indicates that the Tenants surrendered their keys for the rental unit to the Landlord on August 31, 2021.

### Analysis

The Landlord makes monetary claims for unpaid rent and for fees charged under the tenancy agreement.

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 find that the tenancy ended on August 31, 2021. I make this finding on the notice to vacate dated July 1, 2021 and the mutual agreement to end tenancy, both of which were signed by the Tenants. The two documents support that the tenancy ended on August 31, 2021, a point that was confirmed on the undisputed evidence of the Landlord's agent that the Tenants gave the keys for the rental unit to the Landlord on August 31, 2021.

I accept the undisputed evidence of the Landlord's agent that the Tenants failed to pay rent on July 1, 2021 and August 1, 2021, which is supported by the rent ledger. I find that the rent of \$1,450.00 as listed in the tenancy agreement also includes a separate parking fee of \$25.00. The rent ledger covers a period of several months and clearly shows that the parking fee was charged and paid by the Tenants over that period. This conduct on the part of the Tenants indicates to me that the \$25.00 parking fee formed part of their rent obligations under the tenancy agreement.

I note that s. 26 of the *Act* imposes an obligation on the Tenants to pay rent regardless of whether the Landlord complies with the *Act*, Regulations, and/or the tenancy agreement. I find that the Landlord has demonstrated that Tenants breached their obligation to pay rent and their parking fee for the months of July and August 2021, which is in contravention of the tenancy agreement and s. 26 of the *Act*. I find that the Landlord could not have mitigated their damages under the circumstances as the Tenants still occupied the rental unit.

I find that the Landlord has established its claim for unpaid in the amount of \$2,950.00 and shall have that order.

I further accept that clause 10 of the tenancy agreement imposes a fee of \$25.00 if rent is paid late, returned, or there are insufficient funds. This type of fee is permitted by s. 7 of the Regulations and is clearly set out in the written tenancy agreement. Based on the rent ledger, I find that the Tenant paid rent late in February 2021 and did not pay at all for July and August 2021. These three months generated a total fee of \$75.00. I accept the Landlord's undisputed evidence that the Tenants did not pay this fee. The Landlord

could not have mitigated their damages under the circumstances. I find that the Landlord has established their claim for compensation for the fees in the amount of \$75.00.

Upon consideration of Rule 2.6 of the Rules of Procedure and the information on the file, I find that the Landlord filed its claim on September 9, 2021. I further find that the Landlord's claim was filed within the 15-days permitted under s. 38(1) of the *Act* such that the doubling provision of s. 38(6) does not apply. Accordingly, I direct that the Landlord retain the security deposit of \$725.00 in partial satisfaction of the amounts owed by the Tenants.

As the Landlord was successful in its application, I find that Tenants shall pay their filing fee of \$100.00.

### Conclusion

The Landlord has established its monetary claim for unpaid rent in the amount of \$2,950.00 and a claim for compensation for fees in the amount of \$75.00.

As the Landlord was successful in its application, I order pursuant to s. 72(1) of the *Act* that the Tenants pay the Landlord's \$100.00 filing fee.

Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit of \$725.00 in partial satisfaction of the amount the Tenants owe.

I make a global monetary order taking the following into account:

Item	Amount
Unpaid rent	\$2,950.00
Fees under clause 10	\$75.00
Landlord's filing fee	\$100.00
Less the security deposit to be retained by the Landlord pursuant to s. 72(2)	-\$725.00
<b>TOTAL</b>	<b>\$2,400.00</b>

Pursuant to s. 67 of the *Act*, I order that the Tenants pay **\$2,400.00** 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 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: April 29, 2022

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Residential Tenancy Branch