



# 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

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

- a monetary order for unpaid rent and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit of \$742.50 and pet damage deposit of \$742.50, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 33 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 2:03 p.m. I monitored the teleconference line throughout this hearing. 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's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed her name and spelling. She stated that she is a senior property manager for the landlord company ("landlord") named in this application. She said that she had permission to speak on behalf of the landlord at this hearing. She confirmed the landlord's name and spelling. She confirmed that I could email a copy of this decision to the landlord's email address noted in this application. She claimed that the landlord owns the rental unit and provided the rental unit address.

The landlord's agent provided the tenants' forwarding mail address, as per the move-out condition inspection report, for me to send a copy of this decision to the tenants after the hearing, since the tenants moved out of the rental unit.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any party.

I explained the hearing process to the landlord's agent. She had an opportunity to ask questions. She confirmed that she was ready to proceed with this hearing. She did not make any adjournment or accommodation requests.

The landlord's agent stated that the tenants were each served with separate copies of the landlord's application for dispute resolution hearing package on October 7, 2021, both by way of registered mail to the rental unit, where the tenants were residing until October 31, 2022. She provided two Canada Post tracking numbers verbally during this hearing. She stated that the landlord did not provide the Canada Post receipts with this application. She initially indicated that the tenants received both packages but after searching the Canada Post website, she confirmed that both mail packages were returned to sender. I reviewed the Canada Post website for both tracking numbers, which indicated that both mail packages were refused and returned to sender. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on October 12, 2022, five days after their registered mailings. Refusal to pick up mail or unclaimed mail does not avoid the deeming provisions of section 90 of the *Act*.

The landlord's agent stated that the tenants were also sent separate copies of the landlord's application for dispute resolution hearing package on October 8, 2021, both by way of email. She said that the landlord did not provide copies of the emails sent to the tenants or include the tenants' email addresses in this application.

The landlord's agent confirmed that she mistakenly uploaded documents regarding another file, a different tenancy, and deceased tenants and their estate, as evidence for this hearing. I did not consider this evidence at the hearing or in my decision, since it is unrelated to this application, tenants, and tenancy.

The landlord's agent confirmed that the landlord is not seeking \$742.50 for liquidated damages from the tenants. She said that although this cost was indicated in the landlord's original application, the landlord was able to re-rent the unit to new tenants as of November 1, 2021, the day after the tenants moved out on October 31, 2021, so it

would be “unfair” for the landlord to seek the above cost from the tenants. I informed her that if this claim was not pursued by the landlord at this hearing, it would be dismissed without leave to reapply, and the landlord could not pursue this claim in the future. The landlord’s agent confirmed her understanding of and agreement to same.

#### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants’ security and pet damage deposits?

Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

The landlord’s agent stated the following facts. This tenancy began on February 5, 2021 and ended on October 31, 2021. Monthly rent in the amount of \$1,485.00 was payable on the first day of each month. A security deposit of \$742.50, a pet damage deposit of \$742.50, and FOB and key deposits of \$225.00, were paid by the tenants and the landlord continues to retain all deposits. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy, but copies were not provided by the landlord for this hearing. The tenants provided the landlord with written permission to retain their full security and pet damage deposits, totalling \$1,485.00, as well as FOB and key deposits, totalling \$225.00. The tenants provided their written forwarding address to the landlord in the move-out condition inspection report.

The landlord’s agent confirmed that the landlord seeks unpaid rent of \$1,485.00 for each month from September to October 2021, totalling \$2,970.00, from the tenants. She said that the landlord seeks unpaid parking charges of \$60.00 per month, from September to October 2021, totalling \$120.00, from the tenants. She stated that the landlord seeks storage locker fees of \$30.00 per month, from September to October 2021, totalling \$60.00. She said that the parking and storage locker fees are indicated in a separate signed agreement with the tenants, which was not provided by the landlord for this hearing. She explained that the landlord wants to retain the tenants’ security deposit of \$742.50, pet damage deposit of \$742.50, and FOB and key deposits of \$225.00, in partial satisfaction of the monetary award. She explained that the landlord also seeks to recover the \$100.00 filing fee paid for this application.

### Analysis

Section 26 of the Act requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case.

The landlord provided undisputed, affirmed testimony and documentary evidence that the tenants failed to pay rent of \$1,485.00 for each month, from September to October 2021, totalling \$2,970.00. The landlord provided a written tenancy agreement and a rent ledger for the above costs. Therefore, I find that the landlord is entitled to a monetary order for same.

I find that the landlord provided undisputed evidence that the tenants failed to pay \$60.00 per month for parking from September to October 2021, totalling \$120.00. Accordingly, I find that the landlord is entitled to a monetary order for same. The landlord indicated this cost in paragraph 5 on page 2 of the parties' written tenancy agreement. The landlord also provided a rent ledger for this cost. Although the landlord did not provide a copy of the separate parking agreement, I accept the landlord's affirmed testimony that the above costs were due for this tenancy, the cost is indicated in the tenancy agreement, and the tenants signed and initialled the written tenancy agreement, agreeing to pay these costs.

I dismiss the landlord's application for storage locker fees of \$30.00 per month, totalling \$60.00, from September to October 2021 without leave to reapply. This cost is not included in the parties' written tenancy agreement. Further, the landlord did not provide a copy of the separate storage locker agreement with the cost amount or the tenants' signature and agreement to pay same.

As the landlord was mainly successful in this application, I find that it is entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$742.50, pet damage deposit of \$742.50, and FOB and key deposits of \$225.00. No interest is payable on the security and pet damage deposits during the period of this tenancy. Although the landlord's agent stated that the tenants allowed the landlord to retain all of their deposits, the landlord did not provide a copy of the move-out condition inspection report as evidence for this hearing. However, in accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain all of the tenants' above deposits, totalling \$1,710.00

The landlord is provided with a monetary order totalling \$3,190.00 for unpaid rent, parking, and the filing fee. The deposits totalling \$1,710.00 are deducted from the above amount, leaving a balance of \$1,480.00. The landlord is provided with a monetary order for \$1,480.00 against the tenants.

### Conclusion

I order the landlord to retain the tenants' security deposit of \$742.50, pet damage deposit of \$742.50, and FOB and key deposits of \$225.00, totalling \$1,710.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,480.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The landlord's application for liquidated damages of \$742.50 and storage locker fees totalling \$60.00, are both dismissed without leave to reapply.

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 26, 2022

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Residential Tenancy Branch