



# 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* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of hearing and evidence by registered mail sent to the forwarding address provided by the tenant on October 22, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on October 27, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to any portion of their award as claimed?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy agreement began on October 1, 2020. Monthly rent was \$1,750.00 payable on the first of each month. A security deposit of \$875.00 was collected and is still held by the landlord. A copy of the tenancy agreement was submitted into evidence.

The landlord submits that there is an arrear of \$200.00 for this tenancy as the tenant failed to pay the full rent on December 1, 2020. The landlord submitted copies of correspondence between the parties referencing the shortfall.

The landlord submits that pursuant to the fixed-term tenancy agreement the tenancy ended on September 30, 2021. The tenant did not return the keys to the landlord until October 11, 2021 when they also provided a forwarding address. The landlord now seeks a prorated amount of \$620.96 for the period that they say the tenant was overholding the rental unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the undisputed evidence I find that the tenant was obligated to monthly rent in the amount of \$1,750.00 on December 1, 2020. I accept the evidence that the tenant failed to pay the full amount owing and there is an arrear for this tenancy of \$200.00 as

at the date of the hearing. Accordingly, I find the landlord is entitled to a monetary award in that amount.

I accept the evidence of the landlord that the tenant overheld the rental unit until October 11, 2021 without paying rent for the month of October. I accept the calculation of the landlord that the prorated amount of the rent owing for that period is \$620.96 and issue a monetary award in that amount accordingly.

As the landlord was successful in their claim, they are also entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour. As the balance of the monetary award of \$920.96 after offsetting with the security deposit of \$875.00 is a negligible amount, I decline to issue an order beyond authorizing the landlord to retain the security deposit for this tenancy.

### Conclusion

The landlord is authorized to retain the full amount of the security deposit for this tenancy.

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: June 6, 2022

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Residential Tenancy Branch