



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on November 25, 2021 seeking an order to recover the money for unpaid rent. Additionally, the Landlord seeks to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 27, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the telephone conference all hearing; the Tenants did not attend.

### Preliminary Matter – service to the Tenant

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with this Notice of Dispute Resolution Proceeding. This means the Landlord must provide proof that the document has been served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing the Landlord presented their evidence showing registered mail to forward the Notice of Dispute Resolution Proceeding to each Tenant. A receipt in their evidence shows the tracking information for each piece of registered mail, sent on December 1, 2022. With this tracking information, the Landlord confirmed each piece was received and signed for by each Tenant. The registered mail contained the evidence the Landlord prepared for this hearing.

I accept the Landlord’s testimony that the hearing material was sent via registered mail. The evidence they presented clearly shows this. Based on the submissions of the

Landlord, I accept they served notice of this hearing and their evidence in a manner complying with s. 89(1)(c) of the *Act*. After reviewing this with the Landlord, I am satisfied the Landlord advised each Tenant of this hearing in due course. The hearing proceeded in the Tenants' absence.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order for recovery of rent, pursuant to s. 67 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

#### Background and Evidence

The Landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. The Tenants and the Landlord signed the agreement on April 30, 2019. This was for the tenancy that started on May 1, 2019. The monthly rent amount was written on the agreement as \$1,000, payable each month.

The Landlord explained how they acquired the business where the Tenants resided, in 2019. For three months when the Landlord acquired the business, the Landlord notified the Tenants that the then-current tenancy agreement was expiring. The Landlord gave the Tenant the choice to either leave (thereby ending the tenancy) or sign a new tenancy agreement. The Tenants indicated they wanted to stay, so the Landlord presented the rent amount of \$1,200.

The Tenants had a work-rent arrangement worked out with the previous Landlord. The Landlord here accommodated that when they acquired the business and presented a new tenancy agreement to the Tenants. This was after a three-month period, after the Landlord acquired the business, when the Tenants did not pay any rent. The arrangement was to be \$700 per month paid by the Tenants for rent, and \$500 duties worked, equating to the rent amount of \$1,200.

On the day of signed the new agreement, the Tenants stated that they did not feel comfortable signing the agreement that showed the rent amount as \$1,200. The Landlord and Tenants both changed the amount on the document to read "\$1,000", and

initialled each line where that amount appears. The tenancy agreement provided by the Landlord in the evidence shows this altered and initialled amount in place.

The agreement shows the Tenant paid a \$300 security deposit on April 3, 2018. This was a carryover from the previous agreement. On the Application, the Landlord provided the amount of \$312.50 as the paid security deposit amount, as well as a pet damage deposit amount of \$300.

The Landlord submitted the tenancy ended on August 31, 2020. This was the result of the Tenants notifying the Landlord that they wished to end the tenancy.

Prior to the tenancy ending, one of the Tenants brought a complaint against the Landlord as their employer. This was for recovery of wages. That Tenant and the Landlord settled the matter for \$3,463.04. The Landlord provided a copy of the settlement agreement signed by the parties on November 22, 2021.

In the hearing, the Landlord described the rationale of the Employment Standards Branch who informed the Landlord (as the employer) that they could not barter wages to an employee. The Tenant's claim, as described by the Landlord, was that they paid less rent, but the Landlord/employer did not pay them fully for light duties.

In their evidence, the Landlord provided the worksheet used by the Employment Standards Branch to calculate the wages owed to the employee, with a set hourly rate and a calculation of hours worked from April 24 2019 to April 23, 2020. This shows the final settlement amount.

The Landlord provided monthly receipts to the Tenants for rent received, through 2019 and 2020 for each month. For each month, these are as follows:

Month	Receipt date	\$ Amount paid
May 2019	April 29, 2019	800
June 2019	May 26, 2019	800
July 2019	June 26, 2019	800
August 2019	July 27, 2019	800
Sept 2019	August 28, 2019	800
Oct 2019	Sept 26, 2019	690
Nov 2019	Oct 23, 2019	700

Dec 2019	Nov 20, 2019	700
Jan 2020	Jan 5, 2020	700
Feb 2020	Jan 22, 2020	700
Mar 2020	Feb 19, 2020	700
April 2020	Mar 30, 2020	200
	Apr 22, 2020	500
May 2020	May 9, 2020	700
June 2020	May 27, 2020	700
July 2020	June 12, 2020	700
Aug 2020	July 20, 2020	700

On a monetary order worksheet dated November 25, 2021 the Landlord provided the amount for 2019 at \$1,900 and the amount for 2020 at \$2,400. The amounts total \$4,300. The \$10 discrepancy for October 2019 is not accounted for.

In the hearing, the Landlord clarified that they established their calculation using the base amount of rent at \$1,000 as it appears on the tenancy agreement.

The Landlord seeks recovery of the rent shortfall given that they reimbursed the Tenant for wages worked via the Employment Standards Branch settlement agreement.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish **all** of the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

To determine the Landlord's eligibility for compensation, I carefully examine the evidence they have presented, to establish whether they have met the burden of proof.

I find as fact, based on the Landlord's affirmed testimony and the evidence they provided in the form of rent receipts, that the Tenants did not pay the full amount of rent

as set out on the tenancy agreement. That amount is \$1,000; however, the rent receipts show the Tenants paid from \$700 to \$800 for each month, consistently over the term of the tenancy. I am satisfied the receipts cover the entire period of this tenancy from May 2019 to August 2020.

I have verified the Landlord's calculation for rent shortages over the months listed for which they provided all receipts. I find positively that the Landlord suffered a loss in the form of the rent shortfall over the period of several months. I find the Landlord has established the value of the loss to them, and it results from the Tenants violating their obligation to pay rent.

I find the Landlord mitigated their loss by referring to the rent amount as \$1,000 as it appears in the tenancy agreement, even though they testified the actual rent amount was \$1,200.

For these reasons, I grant the Landlord an award for the full amount of their claim; that is compensation for \$4,300.

Because the Landlord was successful in their Application, I grant the reimbursement of the \$100 Application filing fee.

### Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,400 for compensation set out above and the recovery of the filing fee for this hearing application. 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, the Landlord may file this Order in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: June 28, 2022

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Residential Tenancy Branch