



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

On December 22, 2021, the Landlords applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Landlord C.R. attended the hearing; however, neither Tenant attended the hearing at any point during the 25-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

She advised that a Notice of Hearing package was served to Tenant T.A. by email on January 22, 2022, as per a Substituted Service Decision dated January 17, 2022. She submitted a screenshot of the email as documentary evidence, and she stated that she did not receive an email back stating that it was undeliverable. Based on this undisputed, solemnly affirmed testimony, I am satisfied that Tenant T.A. was sufficiently served the Landlords’ Notice of Hearing package.

She then advised that a Notice of Hearing package was also served to Tenant N.G. by email on February 14, 2022, as per a Substituted Service Decision dated February 7, 2022. She submitted a screenshot of the email as documentary evidence, and she stated that she did not receive an email back stating that it was undeliverable. Based on this undisputed, solemnly affirmed testimony, I am satisfied that Tenant N.G. was sufficiently served the Landlords’ Notice of Hearing package.

She also advised that their evidence was served to each Tenant, to their respective email addresses, on April 24, 2022. Based on this undisputed, solemnly affirmed testimony, as service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlords' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit and pet damage deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on July 1, 2021, and that the tenancy ended when a bailiff physically removed the Tenants from the rental unit on January 11, 2022. Rent was established at \$2,400.00 per month and was due on the first day of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$400.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Tenants never provided the Landlords with a forwarding address in writing.

She advised that the Landlords are seeking compensation in the amount of **\$6,700.00** for rental arrears for October, November, and December 2021 rent. She stated that the

Tenants' cheque for October 2021 rent went NSF, and that they did not pay any rent for November or December 2021 either. However, they did pay \$500.00 on October 31, 2021 to apply towards the outstanding rental arrears. She referenced the documentary evidence submitted to support the claims for rent outstanding.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenants' deposits, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlords must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, I am satisfied that the tenancy effectively ended on January 11, 2022, and that a forwarding address was never provided. As such, I find that the Landlords were not obligated to do anything with these deposits. Therefore, I find that the doubling provisions do not apply to the security deposit or pet damage deposit in this instance.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

With respect to the Landlords' claim for compensation in the amount of \$6,700.00, I am satisfied from the consistent and undisputed evidence that the Tenants were in arrears for rent. As such, I grant the Landlords a monetary award in the total amount of **\$6,700.00** to satisfy this claim.

As the Landlords were successful in these claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to apply the security deposit and pet damage deposit in partial satisfaction of these debts.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlords**

Item	Amount
Rental arrears	\$6,700.00
Recovery of filing fee	\$100.00
Security deposit	-\$1,200.00
Pet damage deposit	-\$400.00
<b>Total Monetary Award</b>	<b>\$5,200.00</b>

#### Conclusion

I provide the Landlords with a Monetary Order in the amount of **\$5,200.00** 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: August 4, 2022

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Residential Tenancy Branch