



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL-S, MNDL-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 tenants 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 landlords attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord MAC (the "landlord") spoke on behalf of both co-landlords.

The landlord testified that they served each of the tenants with the notice of hearing and evidence by registered mail sent to the forwarding address provided by the tenants on August 20, 2022. The landlord submitted valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the tenants are each deemed served with the landlord's materials on August 25, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

Are the landlords entitled to the relief sought?

### Background and Evidence

The landlords provided undisputed evidence regarding the following facts. This tenancy began on June 15, 2022. Monthly rent under the signed tenancy agreement was \$3,000.00 payable on the first of each month. A security deposit of \$1,500.00 was collected at the start of the tenancy and is still held by the landlord.

The tenants failed to pay rent as required on the tenancy agreement on July 1, 2022. The tenants subsequently vacated the rental unit without paying rent on July 22, 2022. The landlord submits that the total arrear for this tenancy is \$3,000.00.

The parties participated in a move-out inspection where the tenants gave written authorization to the landlord to retain \$300.00 of the security deposit for this tenancy for damages caused to the rental unit.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the present case the tenants provided their forwarding address in the move-out condition inspection report dated July 22, 2022 and the landlords filed their application for dispute on July 30, 2022. I therefore find the landlords were within the statutory timeline to file their application.

I further accept the evidence that the tenants gave written authorization that the landlord may retain \$300.00 of the security deposit. Accordingly, I find the landlords are able to keep the \$300.00 of the deposit to offset damages and losses attributable to the tenancy.

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.

I accept the undisputed evidence of the landlords that the tenants failed to pay rent in the amount of \$3,000.00 as required under the signed tenancy agreement. I accept the evidence that the total arrear for this tenancy is \$3,000.00 as claimed. Accordingly, I issue a monetary award in that amount in the landlords' favour.

As the landlords were successful in their application, they are also entitled to recover the filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the balance of tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,900.00. 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: September 26, 2022

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Residential Tenancy Branch