



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, OPM, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on May 5, 2022 seeking an order of possession of the rental unit. Additionally, the Landlord is seeking an order to recover rent amounts owing, and this Application’s filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 9, 2022. In the conference call hearing, I explained the process and provided the Landlord – the sole attending party -- the opportunity to ask questions.

### Preliminary Matters

The Landlord attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The Tenant did not attend the telephone conference call hearing. The Landlord advised the Tenant deceased at the end of June 2022.

As per Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I amend the named Tenant to indicate “deceased”. In the hearing, the Landlord provided that they learned the Tenant deceased at the end of June 2022. The Landlord did not name a personal representative of the deceased Tenant’s estate as a respondent.

Because the Tenant is now deceased, the Order of Possession for which the Landlord applied is not an issue. I dismiss this piece of the Landlord’s Application without leave to reapply.

The Landlord raised specific questions on their obligations with respect to the Tenant’s personal property. For this, I direct the Landlord to the *Residential Tenancy Regulation*, Part 5.

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

In the hearing the Landlord set out how they served this notice to the Tenant after they received the Notice of Dispute Resolution Proceeding (the "Notice") from the Residential Tenancy Branch on May 16, 2022. Their evidence for in-person service was a point-of-view photo of them handing the Notice document to the Tenant directly. Additionally, they served the document to the Tenant via registered mail on May 19, with a copy of that receipt and tracking information appearing in their evidence.

Based on the submissions of the Landlord, I accept they served the Notice in a manner complying with s. 89(1)(a) and (c) of the *Act*. The hearing thus proceeded without the Tenant, in order to establish the Landlord's legal rights and/or obligations.

#### Issue(s) to be Decided

Is the Landlord entitled to recovery of rent amounts owing, 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 presented a copy of the purchase and sale agreement that provides details on the existing rent amount. This was when the Landlord purchased the property in late 2021. This specifies the seller disclosed the Tenant here paid \$525 in rent, payable on the 1<sup>st</sup> day of each month. There was an initial security deposit of \$350 at the start of the tenancy. This matches the basic information the Landlord provided on the Application.

The Landlord seeks rent amounts owing. With the signing of a Mutual Agreement to end tenancy in March 2022, the Landlord waived the requirement for March 2022 rent. This was with the agreement that the Tenant would move out from the rental unit at the end of March.

On April 30, the Landlord visited the rental unit and the Tenant was still occupying that space. The Tenant basically stated to the Landlord that they should seek dispute resolution for rent amounts they were not paying from that point on.

Specifically, the Landlord seeks April 2022 to August 2022 rent amounts. This is \$525 per month for that five-month duration, totalling \$2,625. Chiefly this is because of the Tenant's own personal items maintaining space in the rental unit. One of the Tenant's family members arrived to remove some personal items from the rental unit; however, all other items remain, consisting of furniture.

### Analysis

From the Landlord's evidence, I find there was an agreement in place between the parties. The rent amount is established in the Landlord's contract of purchase and sale details in their evidence.

I find the Tenant did not move out from the rental unit as required by the end of March 2022. This is based on the Landlord's affirmed testimony giving details on the Tenant overstaying.

The Tenant passed away at the end of June 2022. To date, the Landlord holds the Tenant's personal property in the rental unit, unable to get full assistance with that from the limited contact they have with a family member of the Tenant.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish 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.

In this situation, I find the Landlord shall receive compensation for the period of time the Tenant overheld occupancy within the retail unit, through June 2022. The Landlord did not

present that they sought clarification or removed the Tenant's personal property after they deceased. There really was no reason why they could not have done so in the event of the Tenant's own death. I find the Landlord could have resumed use of the rental unit for new tenancy purposes with new tenants had they done the work involved. I grant reimbursement of rent amounts owing ONLY for April through to June 2022 when the Tenant was in the rental unit.

As the Application in this matter was not contentious, I find the Landlord is not entitled to the \$100.00 filing fee paid for this application.

### Conclusion

Pursuant to s. 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,575, for rent owed for April to June 2022. I provide this Monetary Order to the Landlord in the above terms and they must serve **this Order** to the Tenant or their representative as soon as possible. Should the Tenant or their representative 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: September 9, 2022

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Residential Tenancy Branch