



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL, FFL**

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 2, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent ; and
- an order granting recovery of the filing fee.

The Landlord's Agent, and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the Tenants confirmed receipt of the Landlord's Notice of Hearing and documentary evidence. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The Tenants confirmed that they did not submit any documentary evidence in response to the Landlord's Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Landlord stated that they purchased the rental property in October 2021. The Landlord stated that he had instructed the seller to serve the Tenants with a Two Month Notice as he intended to occupy the rental unit and was meant to have vacant possession as of October 31, 2021. The parties agreed that the Tenants disputed the Two Month Notice and that the tenancy ended on December 31, 2021.

The parties confirmed that the Tenants were required to pay rent in the amount of \$2,250.00 to the Landlord on the first day of each month. The parties agreed that the Tenants paid rent to the Landlord (purchaser) for October 2021. The parties agreed that the Tenants were entitled to compensation equivalent to one month of rent in accordance with the Two Month Notice, which was applied to December 2021 rent.

The Landlord is claiming that the Tenants failed to pay November 2021 rent in the amount of \$2,250.00. The Tenants stated that the seller instructed them to not pay November 2021 rent as they would forward the Tenants' security and pet damage deposits totalling \$2,250.00 to the purchaser in lieu of paying November 2021 rent. The Landlord stated that these deposits were never received by the Landlord despite several requests from the purchaser to the seller.

The Tenants are of the impression that their deposits were applied to November 2021 rent. As such, they feel as though they are not required to pay any further amounts to the Landlord. The Landlord stated that the Tenants' deposits were not transferred to him in the sale of the rental unit as the sale agreement stipulated that the rental unit was meant to be vacant.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

According to the Residential Tenancy Policy Guideline 17: Security Deposits

“A tenant must not apply all or part of the security deposit to rent without the written consent of the landlord”

In this case, I find that the Tenants have provided insufficient evidence to demonstrate that they had an agreement with the seller to pay the Tenants' November 2021 rent to the purchaser. I find that the deposits are not meant to be applied to rent owing unless written consent of the Landlord is obtained. I find that it would have been the Tenants responsibility to pay the rent to the Landlord (purchaser), who was the new Landlord at the time that November 2021 rent was due.

As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$2,250.00** for November 2021 rent. Having been successful, I also find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$2,350.00.

### Conclusion

The Tenants have breached the Act by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$2,350.00. The monetary order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 27, 2022

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Residential Tenancy Branch