



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **CORRECTION DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Section 78 of *Residential Tenancy Act* enables the Residential Tenancy Branch to correct typographic, grammatical, arithmetic or other similar errors in a decision or order, or deal with an obvious error or inadvertent omission in a decision or order.

In my original decision I recorded the following testimony and made the following finding:

Both parties agreed to the following facts. The tenants did not cancel their pre-authorized debit and on February 1, 2018, \$2,022.00 was debited from the tenants' account with \$872.00 of that being applied to rent for February 1-14, 2018, and \$1,011.00 being applied against the liquidated damages charge with a credit owing to the tenants of \$139.00. The landlord's ledger was entered into evidence and confirms the above payments.

The landlord is seeking \$872.00 for rent from February 1-15, 2018 and liquidated damages in the amount of \$1,011.00. The tenants testified that they agree to pay the liquidated damages charge in the amount of \$1,011.00 but dispute the rent charge in the amount of \$872.00.

I find that in attempting to rent the property at a rate \$278.00 above the rate paid by the tenants, the landlord failed to mitigate her loss. Due to the landlord's failure to mitigate her loss, I find that she is not entitled to recover any rent for February 1-14, 2018. Since the landlord already received payment for February 1-14, 2018, I find that the tenants are entitled to recover the \$872.00 paid to the landlord for rent from February 1-14, 2018.

As the tenants agreed that they are responsible for the liquidated damages charge in the amount of \$1,011.00 I find that the landlord is entitled to that amount. However, since the landlord has already received \$1,011.00 from the tenants, I do not need to issue a Monetary Order in that amount to the landlord.

In the Request for Correction, the landlord stated that the tenants put a stop order on their pre-authorized debit for February 1, 2018 and that the landlord did not retain February 2018's rent in the amount of \$2,022.00. This statement directly contradicts the testimony of the landlord at the hearing and the tenant ledger submitted into evidence for the hearing.

In the Request for Correction, the landlord attached an updated copy of the tenant's ledger with entries from March 7, 2016 to February 21, 2018. The updated ledger states that the February 1, 2018 payment of \$2,022.00 was returned to the tenants. The tenant ledger that was entered into evidence at the original hearing does not state the same. The tenant ledger entered into evidence at the original hearing only shows entries from March 7, 2016 to February 1, 2018.

The original decision is based on the evidence submitted in the application and the testimony of both parties. An application for correction is not the appropriate forum in which to have your claim re-heard or to submit evidence that was not included in the original application.

I decline to make any correction and I confirm my original decision and order.

I note that section 79(1) and section 79(2) of the *Act* state:

**79** (1)A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.

(2) A decision or an order of the director may be reviewed only on one or more of the following grounds:

- (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
- (b) a party has new and relevant evidence that was not available at the time of the original hearing;
- (c) a party has evidence that the director's decision or order was obtained by fraud.

I also note the time limit to apply for review stated in section 80 of the *Act*:

**80** A party must make an application for review of a decision or order of the director within whichever of the following periods applies: (a) within 2 days after a copy of the decision or order is received by the party, if the decision or order relates to

- (i) the unreasonable withholding of consent, contrary to section 34
- (2) *[assignment and subletting]*, by a landlord to an assignment or subletting,
- (ii) a notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, or
- (iii) an order of possession under section 54 *[order of possession for the tenant]*, 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]*;

(b) within 5 days after a copy of the decision or order is received by the party, if the decision or order relates to

- (i) repairs or maintenance under section 32 *[obligations to repair and maintain]*,
- (ii) services or facilities under section 27 *[terminating or restricting services or facilities]*, or
- (iii) a notice to end a tenancy agreement other than under section 46 *[landlord's notice: non-payment of rent]*;

(c) within 15 days after a copy of the decision or order is received by the party, for a matter not referred to in paragraph (a) or (b).

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: November 23, 2018

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Residential Tenancy Branch