



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL, FFL**

### Introduction

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

- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The tenant testified that they were served with the landlord's hearing package and had not provided any materials of their own. Based on the testimony I find that the tenant was duly served with the materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

The parties agree on the following facts. The monthly rent for this tenancy was \$2,357.00 payable on the first of each month. A security deposit of \$1,150.00 and pet damage deposit of \$1,150.00 were collected at the start of the tenancy and is still held by the landlord. The tenancy ended on August 31, 2020 when the tenant vacated the rental unit.

The tenant failed to pay full rent for the month of April 2020 and there was a rental arrear of \$1,057.00 for that month. The tenant failed to pay any rent for the duration of the tenancy for the months of May, June, July and August, 2020 and there is a total rental arrear of \$10,485.00 as at the date of the hearing

The landlord agreed that this tenancy ended by August 31, 2020 but submits that the tenant did not provide notice pursuant to the Act and therefore seeks a monetary award for rental income losses for September, 2020.

The tenant testified that they vacated the rental unit by August 31, 2020 in accordance with a 1 Month Notice to End Tenancy for Cause issued by the landlord July 27, 2020. The tenant gave some testimony that the rental unit required maintenance which the landlord failed to perform and about their limited economic means.

### Analysis

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 evidence of the parties that there was an enforceable tenancy agreement which obligated the tenant to pay rent in the amount of \$2,357.00 by the first of each month. I accept the undisputed evidence of the parties that the tenant failed to pay full rent for the months of April through August, 2020 as required under the tenancy agreement. I accept that there is a total rental arrear of \$10,485.00 as at the date of the hearing.

While the landlord seeks rental income losses for September, 2020 I find insufficient evidence that these were incurred as a result of the tenant's actions. I accept the evidence of the parties that the tenant vacated the rental unit in accordance with the landlord's Notice by August 31, 2020. I therefore find that any rental income losses suffered by the landlord are not attributable to a breach on the part of the tenant.

While the unpaid rent arises from the months of April through August, affected months as defined in the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation ("C19 Tenancy Regulation"), as detailed in Residential Tenancy Policy Guideline 52, if a tenancy has ended prior to a repayment plan being given an arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

Accordingly, I issue a monetary award in the landlord's favour for the unpaid rent of \$10,485.00.

As the landlord's application was successful, they are entitled to recover their filing fee from the tenant.

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

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$8,285.00, allowing them to recover the unpaid rent and filing fee and to retain the deposits for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: October 6, 2020

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Residential Tenancy Branch