



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Locke Property Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNRL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid/Lost rent and utilities; and
- Recovery of the \$100.00 filing fee.

The hearing was originally convened by telephone conference call on August 28, 2020, at 1:30 PM and was attended by two agents for the Landlord G.W. and D.B. (the Agents) and the deceased Tenant's sister, H.H., all of whom provided affirmed testimony. The hearing was subsequently adjourned in order to allow the parties to provide additional documentary or other evidence with regards to whether or not the deceased Tenant's sister H.H. meets the definition of a Personal Representative of the Estate of the deceased Tenant as set out in Residential Tenancy Branch Policy Guideline (the Policy Guideline) #43, and whether H.H. should therefore be named as the deceased Tenant's Personal Representative in the Application and any associated decisions and orders. An interim decision was made by me on August 31, 2020, and the reconvened hearing was set for October 16, 2020, at 11:00 AM. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the Branch) on August 31, 2020, at the email addresses requested to be used by them during the hearing for this purpose, which I have recorded on the cover page for this decision.

Although several orders were made by me in the interim decision regarding the submission of documentary or other evidence by the parties relating to whether or not H.H. meets the definition of a Personal Representative of the Estate of the deceased Tenant under Policy Guideline #43, for the sake of brevity, I will not repeat those orders

or the other matters covered in the interim decision here. As a result, the interim decision dated August 31, 2020, should be read in conjunction with this decision.

On August 31, 2020, I was unexpectedly unavailable at the time of the hearing and due to an inadvertent administrative error on the part of the Branch, the hearing was convened by telephone conference call as scheduled before a different arbitrator, instead of rescheduled before me on a different date. Only the Agents G.W. and D.B. attended and the arbitrator who convened the hearing on October 16, 2020, correctly identified that I was seized of these matters and adjourned the matter to be reconvened before me on a different date. As a result, the interim decision issued by the arbitrator, dated October 16, 2020, should also be read in conjunction with this decision.

A copy of the above noted interim decision and the Notice of Hearing for the reconvened hearing set before me at 9:30 A.M. on January 7, 2020, was sent to the parties by the Branch on October 19, 2020, at the email addresses given for this purpose at the original hearing.

The hearing was reconvened by telephone conference call before me on January 7, 2021, at 9:30 AM and was attended only by the Agents G.W. and D.B. No one appeared at the hearing on behalf of the deceased Tenant. I verified that the hearing details contained in the Notice of Hearing were correct and note that the Agents were able to attend the hearing on time and without issue using this information. Given the above, and as records at the Branch indicate that the Notice of Hearing was sent to H.H., the person who attended the original hearing on behalf of the deceased Tenant, by email on October 19, 2020, at the email address provided by them at the original hearing for the purpose of receiving correspondence from the Branch, the hearing therefore proceeded as scheduled despite H.H.'s absence and the absence of any other representative for the deceased Tenant pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Agents, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application and recorded on the cover page for this decision.

## Preliminary Matters

### Preliminary Matter #1

Although the Tenant was personally named by the Landlord as the Respondent in the original Application, all parties agreed at the original hearing on August 28, 2020, that the Tenant was deceased. As a result, the Agents sought to have the deceased Tenant's sister H.H. who appeared at the original hearing on behalf of the Tenant, named as the Personal Representative of the Estate of the deceased Tenant, pursuant to policy Guideline #42.

At the original hearing the Agents argued that H.H. is listed as the executor in the Tenant's will, a copy of which was submitted for my consideration by H.H., and has been acting on the Tenant's behalf in relation to their affairs since their death. As a result, the Agents argued that H.H. should be named as the Personal Representative of the Estate of the deceased Tenant. However, H.H. argued that the will submitted by them is not a legally enforceable will, as it was not witnessed, and therefore they are not legally the Tenant's executor. H.H. stated that the bank has refused to honor the will and therefore they should not be considered the Personal Representative of the Estate of the deceased Tenant.

Although I adjourned the matter to allow both parties to submit additional documentary or other evidence for my consideration with regards to whether or not H.H. meets the definition of a Personal Representative for the Estate of the deceased Tenant pursuant to Policy Guideline #43, I note that H.H. failed to attend both reconvened hearings on this matter, despite having been sent the Notice of Hearing for each hearing by the Branch in the manner requested by them at the original hearing.

While H.H. appears to have submitted some additional documentary evidence to the Branch on October 9, 2020, they did not appear at either reconvened hearing to present this documentary evidence, or any other evidence or testimony, for consideration or to provide any details regarding service of this documentary evidence on the Landlord. Rule 7.4 of the Rules of Procedure states that evidence must be presented by the party who submitted it, or by the party's agent, and that if a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As H.H. did not appear at either reconvened hearing to present the documentary evidence and written submissions submitted to the Branch by them on October 9, 2020, or to satisfy me that these documents had been served as required by the Act, the Rules of Procedure and the orders set out by me in the interim decision dated August 31, 2020, I have not considered them in rendering this decision.

Although H.H. argued at the original hearing that the will submitted by them is invalid and therefore they are not the executor of the deceased Tenant's estate, H.H. failed to attend the reconvened hearings set for the express purpose of presenting evidence and testimony regarding whether H.H. is the executor of the deceased Tenant's will and estate and therefore whether they should be named as the Personal Representative of the Estate of the deceased Tenant. The Agents argued that H.H. should be named as the Personal Representative of the Estate of the deceased Tenant as H.H. is listed as the executor in the Tenant's will, a copy of which was submitted for my consideration by H.H. and discussed by the parties at the original hearing. I agree that H.H. is listed as the executor of the deceased Tenant's estate in the will and I therefore find on a balance of probabilities, that H.H. is the executor of the will for the purpose of meeting the definition of Personal Representative of the Estate of the deceased Tenant as set out in Policy Guideline #43. I have therefore named H.H. as the Personal Representative of the Estate of the deceased Tenant.

Despite the above, I advised the Agents that I do not have the jurisdiction to decide the validity of wills and that it is the Applicant's duty to ensure that Respondents have been properly named, including properly naming the Personal Representative of the Estate of a deceased person. I advised the Agents that any orders issued through the dispute resolution process against a party later determined to have been incorrectly named, may not be enforceable. The Agents indicated their understanding and stated that they still wished to proceed with the hearing as scheduled and have a decision rendered naming H.H. as the Personal Representative of the Estate of the deceased Tenant.

### Preliminary Matter #2

Although the Agents chose only two grounds for filing their Application, recovery of money for unpaid rent and repayment of the filing fee, it is clear to me on the Application itself, without any need to review the documentary evidence submitted, that the Landlord is also seeking compensation for monetary loss or other money owed for unpaid utilities and cleaning costs.

As a result, I have amended the Application to include a claim for compensation for monetary loss or other money owed for unpaid utilities and cleaning costs pursuant to rule 4.3 of the Rules of Procedure, as I find that this could reasonably have been anticipated by the Respondent given the wording used by the Agents in the Application.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month to month (periodic) tenancy began on December 16, 2016, and that \$780.00 in rent was due on the first day of the month at the start of the tenancy. It also states that a \$390.00 security deposit was paid.

The Agents stated that at the time the tenancy ended, rent was \$849.00 per month, and confirmed that the Landlord still holds the deceased Tenant's \$390.00 security deposit in trust.

The Agents stated that the Tenant passed away at the end of March 2020, and that possession of the rental unit was not returned to the Landlord by the deceased Tenant's Personal Representative H.H., until May 31, 2020, as the deceased Tenant's Personal Representative lives in another country and had difficulty attending the rental unit to collect the deceased Tenant's possessions due to the pandemic and travel restrictions. A copy of the deceased Tenant's death certificate is in the documentary evidence before me for consideration, which lists March 26, 2020, as the Tenant's date of death. The written statement submitted by the Agents states that on April 23, 2020, the Tenant's Personal Representative advised them that they would pay May rent, but failed to do so. As a result, the Landlord is seeking \$849.00 in unpaid/lost rent for May 2020, as the rental unit could not be re-rented during that time.

The Agents also stated that the rental unit required cleaning and that some items left behind by the Tenant needed to be removed at the end of the tenancy and sought \$165.38 for cleaning costs and garbage/furniture removal. The Landlord submitted a

condition inspection report containing move-in and move-out condition inspection details, an invoice for cleaning costs and garbage/furniture removal, and a summary of invoices in support of this position.

Although the Landlord sought \$28.17 in unpaid utilities as part of the Application, the Agents withdrew this portion of the monetary claim at the hearing as this amount has been paid and sought only \$1,114.38 for lost May 2020 rent, cleaning costs, garbage and furniture removal, and recovery of the filing fee.

The Agents stated that as the Landlord still holds the Tenant's \$390.00 security deposit in trust, they are seeking authorization to withhold this amount towards the deceased Tenants debt and a Monetary Order for any balance owed thereafter by the deceased Tenant's estate to the Landlord.

No one appeared on behalf of the deceased Tenant or the Personal Representative of the Estate of the deceased Tenant at the hearings on October 16, 2020, or January 7, 2021, to provide any evidence or testimony for consideration, and although the Personal Representative for the Estate of the deceased Tenant appeared at the original hearing on August 28, 2020, the matters discussed at that hearing were restricted to service of the Notice of Dispute Resolution Proceeding Package, service of the documentary evidence before me at that time, and submissions regarding whether H.H. is the executor of the deceased Tenant's will and/or a Personal Representative for the Estate of the deceased Tenant pursuant to Policy Guideline #43.

### Analysis

Based on the documentary evidence and affirmed testimony of the Agents, I find as fact that rent in the amount of \$849.00 was due under the tenancy agreement at the time the tenancy ended, that the tenancy ended on May 31, 2020, the date indicated on the condition inspection report for the move-out condition inspection completed with H.H. and the Agent G.W., and that the rental unit was not left reasonably clean at the end of the tenancy as required by section 37 of the Act and Policy Guideline #1, resulting in a loss to the Landlord in the amount of \$849.00 for May 2020 rent and \$165.38 for cleaning costs and garbage/furniture removal. I am also satisfied that the Landlord mitigated their loss as required by section 7 of the Act as no additional lost/unpaid rent has been sought for after the end date of the tenancy and I am satisfied that the cleaning and garbage/furniture removal was completed at a reasonably economic rate.

Based on the Above, I therefore grant the Landlord's claim seeking \$1,014.38 in unpaid rent and cleaning and garbage/furniture removal costs. As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

As no arguments were made with regards to extinguishment of either party's rights in relation to the security deposit, I find as fact that neither party extinguished their rights. Although I am not satisfied that the deceased Tenant's right to the return of the security deposit has been triggered under section 38(1) of the Act, as I am not satisfied that a forwarding address has been provided to the Landlord in writing, I find that the Landlord never the less filed their Application 5 days after the end date for the tenancy. As a result, I find that the doubling provisions set out under section 38(6) of the Act do not apply and that the Landlord was entitled to retain the deceased Tenant's security deposit in trust.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to withhold the \$390.00 security deposit in partial repayment of the above noted amounts owed and I grant the Landlord a Monetary Order for the remaining balance, \$724.38, pursuant to section 67 of the Act.

### Conclusion

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to withhold the \$390.00 security deposit in partial repayment of amounts owed by the deceased Tenant's estate to the Landlord.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$724.38**. The Landlord is provided with this Order in the above terms and the Personal Representative of the Estate of the deceased Tenant must be served with this Order as soon as possible. Should the deceased Tenant's estate 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 Act.

Dated: January 7, 2021

---

Residential Tenancy Branch