



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNRL-S, FFL**  
                                 **OPRM-DR, OPR-DR-PP, FFL**

**CNR, FFT**

### **Introduction**

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (the “Act”).

The landlord applied for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- Authorization to recover the filing fees from the opposing party pursuant to section 72;
- An order of possession and a monetary order for unpaid rent by direct request pursuant to sections 46, 55 and 67;
- An order of possession for unpaid affected rent after serving a repayment plan pursuant to sections 46 and 55;
- Authorization to recover the filing fees from the opposing party pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46; and
- Authorization to recover the filing fees from the opposing party pursuant to section 72.

Both the landlord and the tenant attended the hearing. The landlord was represented by property manager, TM (“landlord”). As both parties were present, service of documents was confirmed. Each party acknowledged service of the other party’s Notice of Dispute Resolution Proceedings package. Both parties are deemed served in accordance with section 89 of the Act.

At the commencement of the hearing, the landlord advised me that the tenant moved out of the rental unit on April 1, 2021. The tenant confirmed she moved out on this date. In accordance with section 44(1)(d), I find the tenancy ended on April 1, 2021 when the tenant vacated the rental unit. As the tenancy has ended, no order of possession is required and pursuant to section 62(4), I dismiss the landlord's application seeking an order of possession and the tenant's application to dispute the notice to end tenancy as both applications do not disclose disputes that may be determined under part 5 of the *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can either party recover the filing fee?

#### Background and Evidence

The landlord testified that rent since April 1, 2020 has been \$2,565.00 per month, payable on the first day of each month. The tenant agreed to this statement.

The landlord produced a direct request worksheet depicting the amount of rent owing, the amount of partial payments received, the date of partial payments and the balance owing after each payment. Between April 1, 2020 and March 31, 2021, the amount of rental arrears came to \$18,500.00, according to the landlord. The tenant did not dispute these amounts, stating, "I do believe she is being truthful".

The landlord stated she is holding the tenant's security deposit in the amount of \$1,250.00 and pet damage deposit in the amount of \$625.00. The landlord sought to retain these deposits in partial satisfaction of any monetary order awarded.

#### Analysis

Based on the evidence before me, I find the tenant was obligated to pay rent in the amount of \$2,565.00 per month on the first day of each month and failed to do so. Section 26 of the *Act* is clear, 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. The tenant has not complied with section 26 of the *Act*.

Based on the undisputed testimony of the landlord, corroborated by the documentary evidence provided, I find the tenant to be in arrears of rent in the amount of \$18, 500.00 up until March 31, 2021, the date the tenancy ended.

Section 67 of the *Act* states if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In accordance with section 67, the landlord is entitled to a monetary award in the sum of \$18,500.00.

I note the landlord filed two applications although both sought the same relief. As the landlord's application was successful, the landlord is entitled to recovery of one of the \$100.00 filing fees for the cost of the application.

The landlord continues to hold the tenant's security and pet damage deposits totaling \$1,875.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain both the security deposit and pet damage deposit in partial satisfaction of the monetary award.

Item	Amount
Arrears in rent	\$18,500.00
Filing fee	\$100.00
Less security deposit and pet damage deposit	(\$1,875.00)
<b>Total</b>	<b>\$16,725.00</b>

#### Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$16,275.00**. 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: May 28, 2021

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Residential Tenancy Branch