



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL MNDCL-S FFL

### Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order of \$3,427.06 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain all or part of the tenant's security deposit towards money owing, and to recover the cost of the filing fee.

The landlords attended the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 15, 2021 (Notice of Hearing), application and documentary evidence were considered. The landlords testified that the Notice of Hearing, application and documentary evidence were served via email on December 16, 2021 after receiving an order permitted such dated December 13, 2021, which was an order for **substituted service**. I have reviewed the email and find that the tenant was deemed served 3 days after December 16, 2021, in keeping with section 44 of the Regulation, which I find is December 19, 2021. As the tenant did not attend the hearing, I consider this matter to be undisputed by the tenant and the hearing continued without the tenant present in accordance with Rules 7.3 and 7.4 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

### Preliminary and Procedural Matter

The landlord confirmed the email addresses of both parties during the hearing. The landlord was advised that that the Decision would be emailed to both parties.

### Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2021 and was scheduled to convert to a month-to-month tenancy after January 31, 2022. Instead, the tenant gave insufficient notice according to the landlord by emailing them on October 25, 2021 that the tenant would be vacating on October 31, 2021.

The landlord has claimed \$3,427.06 as follows:

1. \$950.00 for November 2021 unpaid rent
2. \$75.23 for unpaid water, sewer and garbage utilities
3. \$250.61 for unpaid electrical and gas utilities between February 2021 and October 31, 2021
4. \$151.22 to replaced lock the tenant changed without permission
5. December 2021 and January 2022 rent which was withdrawn during the hearing.

Regarding 1 above, the landlords have claimed \$950.00 for unpaid November 2021 rent as the tenant gave insufficient notice before they vacated the rental unit and were not entitled to breach a fixed-term tenancy. The landlords confirmed that were able to re-rent the rental unit for December 1, 2022, and accordingly withdrew item 5 listed above as the landlords complied with section 7 of the Act by minimizing their losses.

Regarding 2 above, the landlords presented the Addendum to the tenancy agreement, and clause 16 indicates that the tenant is responsible for 30% of all utilities. The

monthly rent indicates that no utilities (water, electricity, gas, garbage and sewer) were included in the monthly rent. The landlords presented a water, sewer and garbage invoice which supports that the tenant's unpaid portion is \$75.23 as claimed.

Regarding 3 above, the landlords have claimed \$250.61 for the remaining unpaid balance of gas and electrical utilities. The landlords presented a spreadsheet and utility invoices which support the \$250.61 amount owing is the 30% amount owing by the tenant.

Regarding item 4, the landlords have claimed \$151.22 due to the tenant changing the rental unit entry lock without permission and then admitting to the landlords that they lost the key to the replaced lock. The landlords also presented an invoice which indicated the cost of the lock plus what the landlords described was labour paid to "Ricardo", who replaced the lock for the landlords.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlords provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. Section 26 of the Act applies and states:

#### **Rules about payment and non-payment of rent**

**26(1) 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.**

[emphasis added]

In addition, section 45(2) of the Act applies and states:

#### **Tenant's notice**

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

**(a) is not earlier than one month after the date the landlord receives the notice,**

**(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

**(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

[emphasis added]

Furthermore, section 37(2) of the Act applies and states:

**Leaving the rental unit at the end of a tenancy**

**37(2)** When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

**(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

[emphasis added]

Based on the above, I find the tenant breached sections 26, 45(2), and 37(2)(b) of the Act. First the tenant failed to pay rent as required, then the tenant was not entitled to end the tenancy earlier than January 31, 2022 as that was the scheduled end date of the fixed-term tenancy agreement before me. Finally, the tenant failed to return the rental unit keys and changed the rental unit locks. As a result, I find the landlord has established a total monetary claim of **\$1,527.06**, which also includes an additional \$100.00 for the recovery of the cost of the filing fee pursuant to section 72 of the Act.

Pursuant to section 38 of the Act, as the as the landlord continues to hold the tenant's security deposit of \$475.00, which has accrued \$0.00 in interest to date, I grant the landlord authorization to retain the tenant's full \$475.00 to offset the \$1,527.06 amount owing. I grant the landlord a monetary order pursuant to section 67 of the Act, for the remaining balance owing by the tenant to the landlord in the amount of **\$1,052.06**.

**I caution** the tenant not to breach sections 26, 45(2) and 37(2)(b) of the Act in the future.

Conclusion

The landlord's application is mostly successful. The landlord has established a total monetary claim of \$1,527.06 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$475.00 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$1,052.06. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenant has been cautioned as described above. This decision will be sent by email to both parties. The monetary order will be sent by email to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 15, 2022

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Residential Tenancy Branch