



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords seeking a Monetary Order for unpaid rent and to recover the cost of the filing fee from the tenants.

The landlord testified that he served the female tenant the Application for Dispute Resolution and Notice of Hearing by personal delivery on November 8, 2011; however the tenant did not appear at the hearing. The landlord, through his testimony and evidence, successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence, against the female tenant only due to lack of service of the Application and Notice of Hearing on the male tenant.

The landlord appeared, gave affirmed testimony, and was provided the opportunity to present his evidence orally and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Are the landlords entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

This month to month tenancy began on November 20, 2010, and monthly rent was \$1,000.00 per month.

The landlord testified that the tenant vacated the rental unit without notice on October 15, 2011, but left her possessions, until he was finally compelled to remove them sometime in November, 2011.

The landlord testified that the tenants originally paid a security deposit of \$500.00 at the start of the tenancy, but the parties agreed, at the tenants' request, that the security deposit would be applied to deficient rent of \$500.00 for June 2011. Therefore, the landlord submitted that he is no longer holding a security deposit for the tenants.

The landlord testified that the tenants were deficient in rent for September 2011, in the amount of \$650.00, and did not pay rent in October, 2011.

The landlords' claim is in the amount of \$1,633.75, which includes unpaid rent of \$650.00 for September, prorated rent from October 1-15, 2011, in the amount of \$483.75 and storage fee from October 16 to November 4, 2011, in the amount of \$500.00.

The landlord relevant evidence included a copy of the tenancy agreement, copies of billing statements signed by the tenant, rent receipts and letters to the tenants regarding late or unpaid rent.

### Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlords in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Under section 26 of the Act, the tenants are required to pay rent in accordance with the terms of the tenancy agreement and are not permitted to withhold rent without the legal right to do so.

I find the tenants were obligated to pay rent on September 1, 2011, and were deficient in the amount of \$650.00.

I also find the tenants were obligated to pay rent for October, 2011, and did not pay.

Due to their successful application, I find that the landlords are entitled to recover the filing fee.

As to the landlords' claim for storage fees of \$500.00, I find that the tenants were not obligated under the tenancy agreement or Act to pay storage fee and therefore find that the landlords have not proven a breach of the agreement or Act. I therefore dismiss their request of \$500.00 for storage fees.

I therefore find that the landlords have established a **monetary claim** of **\$1,700.00**, comprised of deficient rent of \$650.00 for September 2011, unpaid rent of \$1,000.00 for October and the filing fee of \$50.00.

The landlords are hereby granted a monetary Order in the amount of **\$1,700.00**. I am enclosing a monetary order for **\$1,700.00** with the landlords' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the tenant fail to comply with this monetary order.

#### Conclusion

The landlords are granted a monetary Order for \$1,700.00.

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: January 25, 2012.

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Residential Tenancy Branch