



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPB, MND, MNR, MNSD, MNDC, FF

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, damages to the rental unit site or property, damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. The Landlord has also requested an order to keep all or part of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary Matter(s)

The Landlord submitted evidence to our office after the initial Application made on January 26, 2012. The Landlord submitted additional evidence and several amendments to their claim on January 27, 2012, January 30, 2012, February 07, 2012 and February 10, 2012. The Landlord stated that they were unable to serve the Tenant with evidence after the tenancy ended on January 31, 2012 as they did not have his forwarding address. The Tenant confirmed that he was not served with the Landlord's evidence of February 07, 2012 and February 10, 2012. The Landlord requested to withdraw several issues contained in their claim with leave to reapply as they have not been able to serve the Tenant with claim amendments and new and relevant evidence. The Tenant provided his new address to the Landlord at the hearing, stating he was unable to provide it sooner.

The Landlord is granted leave to reapply for all issues except for rent owed for January 2012, NSF fees for two NSF cheques January 2012, the security deposit, and the filing fee for the current Application. The issues of rent owed for January 2012, NSF fees for two NSF cheques January 2012, the security deposit, and the filing fee were heard at today's hearing (February 15, 2012), as a result I have granted the Landlord leave to reapply for the other issues.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent, damages and losses for NSF fees, recovery of the filing fee and an order to keep all or part of the security deposit?

Background and Evidence

An unsigned tenancy agreement between the parties was submitted in the evidence by the Landlord. The Tenant confirmed that there was a written tenancy agreement, however, he thought that he had returned a signed copy to the Landlord at the start of the tenancy.

The parties agreed that the tenancy agreement states that the tenancy commenced on July 26, 2010, and rent is due on the second day of the month in the amount of \$1,600.00. The Tenant paid the Landlord a security deposit of \$800.00 at the start of the tenancy.

The parties agreed that the Tenant failed to pay rent on January 02, 2012 and two NSF cheques for rent were issued. The parties agreed that on January 23 or 24 the Tenant paid \$800.00 rent in cash to the Landlord, and still owed a balance of \$800.00 for rent.

The Landlord stated that as they did not have formal written consent from the Tenant to keep the security deposit, they filed a claim for the unpaid rent and a request for an order to keep the security deposit.

The Tenant stated he told the Landlord verbally and by email that they could keep the \$800.00 security deposit so that the remaining rent for January 2012 was paid. The Tenant stated that he has no objection to the Landlord receiving an order to keep the security deposit for the unpaid rent.

The Landlord stated that he incurred a total of \$15.00 in NSF bank fees (\$7.50 x 2) for two NSF rent cheques issued by the Tenant in January 2012, prior to the Tenant paying a portion of the rent owed in cash.

The Tenant stated that he did issue NSF cheques to the Landlord inadvertently, and he agrees the Landlord is owed \$15.00 for the costs incurred and consents to a monetary order for the \$15.00 claimed by the Landlord.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

### Analysis

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

The Landlord requests a monetary order for \$815.00 (\$800.00 unpaid rent for January 2012, and NSF fees \$15.00). The Tenant agrees that the Landlord is entitled to keep the security deposit and have a monetary order for the balance of these amount owed.

Pursuant to section 63 of the Act, the parties have agreed to a settlement for the unpaid rent and NSF fees claimed by the Landlord. The Tenant agrees that the Landlord is owed \$815.00 and that the Landlord may keep the security deposit of \$800.00 to offset the amounts owed.

As there is no dispute from the Tenant that the rent and NSF amounts are owed, I find that the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$865.00

I order that the Landlord retain the security deposit (\$800.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$65.00**.

### Conclusion

The Landlord is granted leave to reapply for other issues indicated in their Application and evidence except for rent owed for January 2012, NSF fees for two NSF cheques January 2012, the security deposit, and the filing fee for the current Application.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$65.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: February 15, 2012.

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Residential Tenancy Branch