



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, compensation for damage and loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

The Landlord testified that they served the Tenant MK, by registered mail with the Application for Dispute Resolution and Notice of Hearing on January 18, 2012 and provided the tracking information from the Canada Post receipt. I find that Tenant MK was served the Application and Notice of Hearing in accordance with section 89 of the Act.

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter(s)

The Landlord named two Tenants, MK and SJ, on their application of January 16, 2012. On January 24, 2012 a decision was issued by our office denying a request from the Landlord for substituted service for Tenant SJ. The decision of January 24, 2012 states that the Landlord is not allowed to serve SJ by registered mail at the address indicated on the Application as this is the address for the SJ's employer. The Landlord stated that they do not have another address to serve Tenant SJ at currently. As the Landlord has failed to serve Tenant SJ in accordance with the Act and the decision issued by our office on January 24, 2012 prohibited the Landlord from serving the SJ by registered mail at her employer's address, the Landlord's application against Tenant SJ is dismissed.

The Landlord testified that they served Tenant MK at his current residential address which is his parent's address. The Landlord stated that they telephoned MK's current address to confirm that he resides there. The Landlord stated that they served the Tenant by registered mail with the Application and Notice of Hearing and evidence at

his current residential address. I accept the Landlord's testimony that they have confirmed MK's current residential address, and that they served him at that address in accordance with the Act. I allow the Landlord's application against Tenant MK. As a result, the balance of this decision below which refers to the Tenant, is in regards to Tenant MK only.

The Landlord requested at the hearing to amend the spelling of MK's last name which had been incorrectly spelled on the Application. The Landlord provided a copy of the tenancy agreement into evidence which provides the correct spelling of MK's last name. I find that it is appropriate to grant the Landlord's request to amend the spelling of Tenant MK's last name on the Application.

#### Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim?

#### Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy commenced on July 01, 2011 with a fixed term that was to continue to June 30, 2012. The rent is due on the first day of the month in the amount of \$1,750.00. The Tenant paid the Landlord a security deposit of \$875.00 when the tenancy commenced. The Landlord provided a copy of the signed tenancy agreement into evidence.

The Landlord stated that the Tenant sent a text message to the Landlord on November 01, 2011 stating that they would be moving out of the rental unit for November 15, 2011, and to keep the security deposit for the half month's rent owed for November 01-15, 2011. The Landlord stated that the Tenant move out and abandoned the rental unit on November 15, 2011. The Tenant did not provide the Landlord a forwarding address, however, the Landlord stated that they were able to locate the Tenant at his parent's address. The Landlord filed for dispute resolution on January 16, 2012.

The Landlord stated that the Tenant failed to pay rent for November 2011 in the amount of \$1,750.00. The Landlord stated that they were not able to obtain new tenants until December 15, 2011 and that they are also claiming rental income loss of half a month's rent for December 2011 in the amount of \$875.00. The Landlord stated that although the Tenant texted them to keep the security deposit, the Landlord did not receive a

signed written authorization from the Tenant to keep the security deposit. The Landlord stated that the Tenant abandoned the rental unit and did not provide a written forwarding address so a move-out inspection could not be done with the Tenant.

The Landlord stated that the Tenant also owes \$500.00 for a gas bill, however, the Landlord stated that they do not have a copy of the gas bill.

The Landlord stated that they have texted and called the Tenant about the outstanding amounts owed, however, he is ignoring their requests for payment. The Landlord stated that the Tenant has not filed an application for dispute resolution.

The Landlord is claiming \$1,750.00 for unpaid rent for November 2011, \$875.00 which represents rental income loss for the first half of December 2011, \$500.00 for the gas bill, the \$50.00 filing fee for this Application, and an order to retain the security deposit.

### Analysis

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

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenant failed to pay rent for November 01, 2011 and the tenancy did not end until November 15, 2011. I find that the Landlord is entitled to \$1,750.00 in unpaid rent for November 2011. I also find that the Tenant breached a fixed term tenancy which was not due to end until June 30, 2012. The Landlord was not able to obtain new tenants for the rental unit until December 15, 2011. As a result, I find the Landlord is entitled to rental income loss for half a month's rent in the amount of \$875.00 for December 2011.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], 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.

I find that the Landlord has provided insufficient evidence that the Tenant owes \$500.00 for a gas bill. As a result, I dismiss the Landlord's request for the gas bill.

As the Landlord has mostly succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to **\$2,675.00** (\$1,750.00 unpaid rent for November 2011+ \$875.00 rental income loss for half a month's rent for December 2011 + \$50.00 filing fee).

The Landlord holds the Tenant's security deposit of \$875.00. I order that the Landlord retain the security deposit, in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$1,800.00**.

### Conclusion

I dismiss the Landlord's claim for the gas bill.

I grant the Landlord's claim in the amount of \$2,675.00, which represents \$1,750.00 unpaid rent for November 2011, \$875.00 rental income loss for half a month's rent for December 2011, and the \$50.00 filing fee. As I have ordered that the Landlord retain the security deposit (\$875.00), I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$1,800.00**. 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: March 29, 2012.

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Residential Tenancy Branch