



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, and an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on February 18, 2014, a Canada post tracking number was provided as evidence of service. The landlord stated the Canada post tracking history indicates the tenant NH, signed for the documents on February 25, 2014. I find the tenant NH, has been duly served in accordance with the Act.

### Preliminary matter

In this case, the landlord has listed two respondents in their application for dispute resolution, however, upon my review of the tenancy agreement the only tenant noted on the agreement is NH. As the respondent JL, did not sign the tenancy, I find the respondent JL is merely an occupant and has no legal rights or obligation under the Act or the tenancy agreement. As a result, the respondent JL was removed from the style of cause.

The landlord's appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy which began on August 1, 2012 and expired on February 1, 2012, the tenancy continued as a month-to-month thereafter. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant.

The landlord claims as follows:

a.	Unpaid rent for February 2014	\$ 600.00
b.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 650.00</b>

The landlord testified the tenant gave notice to end the tenancy on January 16, 2014 with an effective vacancy date of February 15, 2014. The landlord stated the tenancy is a month-to-month with rent payable on the first of the month and the tenant was required to pay all rent owed for February. However, the tenant prorated the month of February as she only paid \$600.00. The landlord seeks to retain the security deposit in full satisfaction of rent owed.

The landlord seeks a monetary order to recover the cost of the filing fee.

### Analysis

Based on the above, the testimony and evidence, and on 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 the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

45 of the Residential Tenancy Act states:

*45 (1) A tenant may end a periodic 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, and*  
*(b) 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*

In this case, the evidence of the landlord was the tenant gave notice on January 16, 2014 to end the tenancy on February 15, 2014. Under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was February 28, 2014.

Section 26 of the Residential Tenancy Act states:

*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.*

The evidence of the landlord was the tenant did not pay all rent owed for February 2014. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for February 2014, in the amount of **\$600.00**.

I find that the landlord has established a total monetary claim of **\$650.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$600.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$50.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: June 05, 2014

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Residential Tenancy Branch

