



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although it lasted approximately 45 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's wife, "witness MR," testified on behalf of the landlord at this hearing.

The landlord testified that he personally served the tenant with the landlord's application for dispute resolution hearing package ("Application") on December 4, 2014. Witness MR testified that she witnessed this service but she could not recall the exact date of service. In accordance with sections 89 and 90 of the Act, I find that the tenant was served with the landlord's Application on December 4, 2014.

### Preliminary Issue – Application Evidence

The landlord applied for a monetary order in the amount of \$2,600.00 for unpaid rent. The landlord changed his testimony a number of times throughout the hearing, indicating that he only wanted to retain the tenant's security deposit of \$650.00. However, the landlord ultimately chose to reduce his monetary claim to \$1,300.00 for unpaid rent and to use the security deposit to offset this amount. The landlord also applied to recover the \$50.00 filing fee for his Application.

The landlord did not provide any written evidence to support his Application. In his monetary order worksheet, submitted with his Application, the landlord indicated that he had submitted copies of returned rent cheques and a copy of the tenancy agreement, with his Application. However, the landlord testified that he did actually not submit these documents with his Application, even though they were in his possession.

Oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: the best evidence available should be provided. During the hearing, the landlord withdrew his Application, only to reinstate it a number of times thereafter. Ultimately, the landlord testified that he wished to proceed with his Application.

In the absence of the tenant's attendance at this hearing and any written evidence from the landlord, including a tenancy agreement, returned rent cheques, a rent ledger or any other documentary evidence, I dismiss the landlord's application for a monetary order for unpaid rent and to retain the tenants' security deposit, with leave to reapply. Given the landlord's repeated change in testimony throughout the hearing and the lack of clarity regarding his claim, I find that available documentary evidence would be required in order for me to make an informed decision on a balance of probabilities.

The landlord's Application to recover the \$50.00 filing fee is dismissed without leave to reapply. The landlord must bear the cost of his own filing fee for this Application.

### Conclusion

The landlord's Application for a monetary order for unpaid rent and authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, is dismissed with leave to reapply. The landlord's application to recover the filing fee is dismissed without leave to reapply.

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: July 09, 2015

