



# 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 landlord for a monetary order for unpaid rent, and to recover the filing fee from the tenant.

The landlord attended the hearing. As the tenant 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 respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on May 3, 2016, a Canada post tracking number was provided as evidence of service. The agent indicated the package was returned unclaimed. The agent stated they resent the package on June 14, 2016, and again the package was returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Refusal or neglect to pick up the package does not override the deemed service provisions of the Act.

The landlord's agent 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.

### Preliminary and Procedural matter

At the outset of the hearing the proper spelling of the tenant's first name was considered as there are several spellings for their name in the documentation. As a result, I found it appropriate to include the variations in the spelling of the tenant's first name these were added as also known as (aka) in the decision and order.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?  
Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

The tenancy began in 2013. Rent in the amount of \$1,250.00 was payable on the first of each month.

The landlord's agent testified that they sold the property to the new owners and the security deposit was transferred to the new owners when the property documents were completed on October 15, 2015.

The landlord's agent testified that the tenant failed to pay them rent for the last month they owned the property. The agent testified that the tenant was served with a 10 day Notice to End tenancy on October 6, 2015; however, the tenancy continued with the new owners. The landlord seeks to recover unpaid rent for October 2016, in the amount of \$1,250.00.

### 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. 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.

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's agent was the tenant did not pay any rent on October 1, 2015; this was the last rent due to the landlord as the property was then sold. I find the tenant has breached section 26 of the Act when they failed to pay rent to the landlord when due under the tenancy agreement and this has caused losses to the landlord.

I find that the landlord has established a total monetary claim of **\$1,350.00** comprised of unpaid rent for October 2015 and the \$100.00 fee paid for this application. I grant the landlord an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

### Conclusion

The tenant failed to pay rent. The landlord is granted a monetary order in the above amount.

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: September 06, 2016

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Residential Tenancy Branch