



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FF MNR MNDC MNSD

### **Introduction**

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, JM, attended the hearing by way of conference call, the tenants did not. I waited until 1:52 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package on January 9, 2017, by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence package. The landlord testified that the tenants' address was verified by a process server, whose affidavit of attempted service was included in the landlord's evidence. In his affidavit, the process server stated that on February 12, 2017 he had attended the address where he believed the tenants were residing, and was told by a male that he

was the “respondent’s brother” and that “the respondents were currently not home”. I find that the process server has provided sufficient evidence to satisfy me that the tenants do reside at the address where the Application was sent by registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord’s application on January 14, 2017, five days after its registered mailing.

**Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent and losses pursuant to section 67 of the *Act*?

Is the landlord entitled to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

**Background and Evidence**

The landlord’s agent testified regarding the following facts. The tenants had moved out in October 2015 after being served with an Order of Possession. A security deposit was paid on April 27, 2014 in the amount of \$1,100.00. The landlord still holds \$1,000.00 of that deposit. The other \$100.00 of that deposit was deducted to satisfy a previous claim.

The landlord indicated in the hearing that a previous hearing was held, and a decision was made by an Arbitrator granting the landlord a monetary order for unpaid rent. The landlord was granted a monetary order in the amount of \$17,900.00, which included the landlord’s authorization to keep the tenants’ security deposit of \$1,000.00 plus an additional \$100.00 for recovery of the filing fee. The landlord testified that the tenant’s name, RP, was spelled incorrectly on the application, and therefore this new application has been made for a new monetary order. The facts remain the same as summarized below.

The following rent was outstanding at the end of the tenancy:

January 2015 rent outstanding	\$1,400.00
February 2015 rent outstanding	\$1,400.00

March 2015 rent outstanding	\$1,400.00
April 2015 rent outstanding	\$1,400.00
May 2015 rent outstanding	\$2,200.00
June 2015 rent outstanding	\$2,200.00
July 2015 rent outstanding	\$2,200.00
August 2015 rent outstanding	\$2,200.00
September 2015 rent outstanding	\$2,200.00
October 2015 rent outstanding	\$2,200.00
Total	\$18,800.00

The landlord's agent requested a monetary order of \$17,900 plus \$100.00 for recovery of the filing fee. As the landlord was previously granted authorization to keep the \$1,000.00 security deposit, this portion of the landlord's monetary claim is dismissed.

### **Analysis**

The landlord's agent provided undisputed evidence at this hearing, as the tenants did not attend. The landlord's agent provided undisputed evidence that the tenants failed to pay outstanding rent in the amount of \$18,800.00. The landlord was previously granted a monetary order for this amount plus \$100.00 for recovery of the filing fee, and authorization to retain the tenants' security deposit in the amount of \$1000.00 in partial satisfaction of the outstanding rent. The landlord indicated during the hearing that the tenant, RP's name was spelled incorrectly in this prior application. The tenants still owe the landlord outstanding rent. Therefore, I find the landlord is entitled to a monetary order of \$17,900.00 in rental arrears for the above period.

As the landlord was previously granted \$100.00 for recovery of the filing fee, and as this is a new application for the same unpaid rent, I am not allowing the landlord recovery of the filing fee for this application.

### **Conclusion**

As the landlord was previously granted authorization to retain the tenants' security deposit, this portion of the landlord's application is dismissed.

I issue a \$17,900.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, plus the \$100.00 filing fee for his original application. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for recovery of the filing fee.

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: April 3, 2017

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Residential Tenancy Branch