



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, MNR

### Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing.

### Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and costs incurred?  
Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background, Evidence

The landlord's counsel made the following submissions. The tenancy began on October 1, 2011 and ended on December 31, 2015. The tenants were obligated to pay \$2700.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1350.00 security deposit which has been returned. Counsel submits that the tenant did not pay the rent for June 2015 and December 2015. Counsel submits that the tenant moved out without notice and did not provide a forwarding address. Counsel submits that the landlord incurred a cost of \$267.75 to obtain the services of a skip tracer so that the tenant could be located and served for this hearing. Counsel submits that the landlord seeks that cost, two months of unpaid rent and the filing fee for a total monetary claim of \$5767.75.

The tenant gave the following testimony. The tenant testified that he was given a notice to move out and was entitled to have the last month free. The tenant testified that the landlord would not process the rent cheques for numerous months and then put several through at once. The tenant testified this was inconvenient and frustrating. The tenant testified that he thought they had worked everything out at the end of the tenancy and worked in "good faith". The tenant testified that he was shocked to be served notice of this hearing. The tenant testified that his phone number and email has never changed.

### Analysis

While I have turned my mind to all the documentary evidence, submissions and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Skip Tracer - \$267.75 -The landlord is seeking \$267.75 for the services of a skip tracer. The landlord has not provided a receipt or invoice of that cost. Based on the insufficient evidence before me I dismiss that portion of the landlords claim.

June 2015 Rent \$2700.00 - The landlord is seeking \$2700.00 of unpaid rent for the month of June 2015. Counsel advised that the landlord did not deposit that cheque until January 2016. The tenant was not advised of any issue of the amount and was unaware that the landlord had not deposited it. The tenant testified that this happened frequently and caused him issues with the bank. The tenant testified that he never received notice or even a phone call advising of the unpaid rent. It's clear to me that the cheque became "stale dated" and was not processed by the bank due to the excessive passage

of time. In addition, the landlord did not even make a phone call to enquire about the unpaid rent until August 2017; when they filed this application. I find that the landlords' actions resulted in implied waiver. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights.

The tenant carried on living in the unit for seven more months without ever being advised of the issue. Furthermore, the landlord then waited another 20 months before filing an application for the unpaid amount without ever making a phone call, text message or sending an email. Based on the above, I find that the landlord is not entitled to this portion of their claim and I therefore dismiss it.

December 2015 rent \$2700.00 – The landlord provided documentary evidence that the tenant put a stop payment on the rent. The tenant testified that he was entitled to one month's free rent. The tenant did not provide any documentation to support that submission. The landlord has provided sufficient evidence to satisfy me that they are entitled to this claim and I grant them \$2700.00. The landlord is also entitled to the recovery of the \$100.00 filing fee.

### Conclusion

The landlord has established a claim for \$2800.00. I grant the landlord an order under section 67 for the balance due of \$2800.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 20, 2018

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Residential Tenancy Branch