



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNDCT  
MNDCL-S, OPRM-DR, FFL

### Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for monetary compensation. The Landlord applied for an Order of Possession based on a 10 Day Notice, for monetary compensation for unpaid rent, and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing and was affirmed to be truthful. No one called in for the Tenant during the approximately 16-minute hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and the Tenant’s evidence by registered mail, and confirmed that their Notice of Dispute Resolution Proceeding package and evidence regarding their Application was sent to the Tenant by registered mail. As such, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

At the outset of the hearing, the Landlord provided testimony that the Tenant has moved out of the rental unit and confirmed that they have possession of the rental unit back. Therefore, the Landlord is no longer seeking an Order of Possession. This decision will deal with the monetary claims only. The Application for Dispute Resolution was amended in accordance with Section 64(3)(c) of the *Act*.

### Issues to be Decided

Is the Tenant entitled to monetary compensation?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on October 1, 2016. Monthly rent is \$1,580.00, due on the first day of each month. However, after adjustments for utility payments, the monthly payment due to the Landlord is \$1,533.00. A security deposit of \$790.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the Landlord.

A 10 Day Notice was served to the Tenant on October 2, 2018 by posting it on the Tenant's door. The 10 Day Notice, signed on October 2, 2018, was submitted into evidence and states that \$1,533.00 was not paid as due on October 1, 2018. The effective end of tenancy date of the 10 Day Notice was stated as October 12, 2018.

The Landlord has applied for a total of \$4,599.00; \$1,533.00 per month in rent for October, November and December 2018. However, the Landlord confirmed that they originally applied for December rent as they were not sure when the Tenant was moving out. They are now seeking October and November 2018 rent only.

The Landlord testified that they did not receive any amount towards rent for October or November 2018, and are therefore seeking a total amount of \$3,066.00. The Landlord has applied to retain the security deposit towards the amount owed.

### Analysis

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states that if a party does not attend the hearing, the hearing may continue in their absence, or the application may be dismissed. As the Tenant did not attend the hearing, I dismiss her application in its entirety, without leave to reapply. I also note that in accordance with Rule 7.4, evidence must be presented by the party that submitted it. Therefore, as the Tenant did not attend the hearing, the documentary evidence submitted by the Tenant is not considered as part of this decision.

I accept the undisputed testimony of the Landlord the rent for October and November 2018 was not paid as due on October 1, 2018 and November 1, 2018. In accordance with Section 26 of the *Act*, a tenant must pay rent when it is due unless they have a right under the *Act* to deduct the rent. I have no evidence before me that the Tenant had a right to not pay \$3,066.00 in rent.

Therefore, I find that the Tenant breached the *Act* by not paying rent as due, and that the Landlord experienced a loss as a result. I determine that the Landlord is entitled to monetary compensation in the amount of \$3,066.00.

As the Landlord was successful with their Application for Dispute Resolution, I also award the recovery of the filing fee in the amount of \$100.00. Pursuant to Section 72 of the *Act*, the Landlord may retain the security deposit towards the total amount owing.

The Landlord is awarded a Monetary Order in the amount outlined below:

October 2018 rent	\$1,533.00
November 2018 rent	\$1,533.00
Recovery of filing fee	\$100.00
Less Security deposit	(\$790.00)
<b>Total owing to Landlord</b>	<b>\$2,376.00</b>

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply. Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$2,376.00** for rent owed for October and November 2018, as well as for the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms and 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.

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: November 06, 2018

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Residential Tenancy Branch