



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 18, 2019. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. The Tenant did not attend the hearing. The Landlord stated that he sent, on February 7, 2019, the Tenant a copy of the Notice of Hearing and evidence by registered mail to the forwarding address the Tenant provided to him at the end of the tenancy. Pursuant to section 88, 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on February 12, 2019, the fifth day after their mailing.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 start of the hearing, the Landlord withdrew his application for monetary compensation for damage to the flooring. The Landlord only wished to proceed with his application to recover unpaid rent, and to claim against the security deposit. I have amended the Landlords' application to reflect this request.

### Issues to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?
- Are the Landlords entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that monthly rent is \$1,200.00 and is due on the first of the month. The Landlord stated that he holds a security deposit in the amount of \$600.00.

The Landlord stated that on January 14, 2019, he received a letter from the Tenant stating she had moved out, and in this letter she provided her forwarding address in writing. The Landlord stated that, although the Tenant was having a tough time paying rent, she told the Landlord she had always told them that she was planning on staying in the rental unit, so this letter came as a surprise. The Landlord stated that he never got any notice from the Tenant or warning before she moved out suddenly. The Landlord stated that he is looking to recover unpaid rent from December 2018, January 2019, and February 2019, totalling \$3,600.00.

The Landlord stated that after the Tenant moved out, he decided to sell the rental unit. The Landlord stated that he contacted the realtor in late January, and proceeded to list and sell the house. The Landlord stated that he never tried to re-rent the unit, and decided he did not want to be a Landlord anymore.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

With respect to the Landlords' claim for lost rent, I note the following relevant portions of the *Policy Guideline #5 – Duty to Minimize Loss*:

***Claims for loss of rental income***

*In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.*

I note the undisputed evidence is that the Tenant did not pay any rent for December 2018 or January of 2019. I further note the Tenant moved out sometime part way through January 2019, without notice. In this situation, the Tenant did not end the tenancy in accordance with the Act, and I find she is liable for rent for December and all of January 2019 (2 x \$1,200.00). However, with respect to rent for February 2019, I find the Landlord did not take sufficient steps to mitigate the loss for this month. The evidence shows that the Landlord did not try to re-rent the unit at all, and in doing so, he contributed to the lack of rental revenue for February 2019. Since the Landlord failed to effectively mitigate his lost rent for February 2019, I decline to award him rent for this month.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were substantially successful with their application, I order the Tenant to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security and pet deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

<b>Item</b>	<b>Amount</b>
Lost Rent	\$2,400.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$2,500.00
LESS: Security and Pet Deposit	\$600.00
<b>Total Amount</b>	<b>\$1,900.00</b>

**Conclusion**

The Landlord is granted a monetary order in the amount of **\$1,900.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this

order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: March 19, 2019

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Residential Tenancy Branch