



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on March 18, 2019. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- 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,
- to recover the filing fee from the tenant for the cost of this application.

The landlord's agent (the "Landlord") attended the hearing and provided testimony. The tenant also attended the hearing. The Landlord stated that she sent the Notice of Hearing, and evidence to the Tenant by registered mail on November 16, 2018. The Tenant stated he did not go and pick up the registered mail, but found out about the hearing by speaking with someone from the Tenancy Branch. Pursuant to section 89 and 90 of the Act, I deem the Tenant was served with the Notice of Hearing and evidence on November 21, 2018, the fifth day after it was mailed. The Tenant did not submit any evidence prior to the hearing.

During the hearing, the Tenant indicated he had a receipt from the Landlord which shows that he paid for one of the months that the Landlord is claiming on this application. Pursuant to section 3.19 of the Rules of Procedure, I allowed the Tenant to upload this document immediately after the hearing. The Tenant is not required to serve this document to the Landlord, as it was a document which originated from the Landlord, or agent of. The Tenant was required to upload this document for me to review by 4pm, March 18, 2019, otherwise it would not be considered. The Tenant successfully uploaded copies of all his receipts for his rent payments, and his exchange of the security deposit within the timeframe I laid out.

During the hearing neither party took issue with the upload of these receipts to assist me in determining what rent it still owed, and each party was given a chance to speak to the receipt being introduced as evidence. The Tenant alleges that an agent for the Landlord issued him this receipt.

The parties agree that the Tenant has already moved out of the rental unit, and that his security deposit was returned in full. As such, I amend the Landlord's application accordingly. The only remaining ground to be considered is the Landlord's application to recover unpaid rent.

Both parties were 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.

#### Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

#### Background and Evidence

Both parties agree that monthly rent was \$800.00, and was due on the first of the month.

The Landlord stated that the Tenant had a falling out with the Landlord and eventually moved out on November 26, 2018. The Landlord stated that the Tenant failed to pay any rent for October or November of 2018, which leaves \$1,600.00 owing for these months. The Landlord acknowledged that there was another agent, who would often go by the different rental units and collect monthly rent but she says the Tenant never paid for October 2018, which is why they issued a 10 Day Notice to End Tenancy on October 31, 2018.

The Tenant stated that he did pay October 2018 rent, and he was given a receipt to prove this. The Tenant stated that he paid \$800.00 cash directly to an agent of the Landlord but he did not get this receipt, or the receipt for September rent until sometime in November, after he had specifically asked for receipts. The Tenant uploaded a copy of the receipts for October 2018 rent, and it is dated October 1, 2018. It indicates that the Tenant paid \$800.00, and that this money was received by the Landlord's agent, E.M. The Landlord's agent, E.M., who attended the hearing, stated she never received this money and was not sure why the Tenant had a receipt for this amount.

The Tenant acknowledged that he did not pay rent for November 2018, despite living in the rental unit until November 26, 2018.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I note the undisputed evidence is that the Tenant did not pay rent for November 2018. I find the Tenant owes money for this month in the amount of \$800.00, given he lived in the unit until November 26, 2018.

With respect to the Landlord's claim for rent for October 2018, I find the Landlord has provided insufficient evidence to substantiate that this amount is owed by the Tenant. I have considered that the Tenant has a receipt showing he paid rent for October 2018, and it appears to be signed by E.M., with a similar signature to what was on the Landlord's portion of the 10 Day Notice to End Tenancy. The Landlord refutes that this was ever paid, and was unable to explain how the Tenant got this receipt.

I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find the Landlord has failed to establish that they are owed rent for October 2018. As such, I dismiss this portion of the Landlord's application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was partially successful in this hearing, I order the tenant to repay the \$100. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Unpaid rent: November 2018	\$800.00
Filing fee	\$100.00
<b>TOTAL:</b>	<b>\$900.00</b>

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$900.00**. 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