



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNSD, MNDC, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed service of documents. The tenant stated that he had not received the notice of hearing or an evidence package from the landlord. The tenant also stated that he was unaware of this hearing until he received a reminder email from the Residential Tenancy Branch Office and therefore he had not served any evidence of his own.

The landlord filed a copy of a tracking slip dated February 26, 2019 as the only evidence that was uploaded to the landlord's electronic file. The landlord stated that the package was returned to her.

### **Issues to be decided**

Is the landlord entitled to an order of possession and a monetary order for unpaid rent and the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The parties agreed that the tenancy started in On September 01, 2018 and that the monthly rent is \$2,700.00 due in advance on the first of each month. The landlord stated that the tenant owed \$620.00 for January 2019 and failed to pay rent for February 2019.

The landlord stated that she served the tenant with a notice to end tenancy on February 13, 2019 by registered mail. The landlord provided a tracking number. The tenant denied having received a notice to end tenancy. The landlord did not file a copy of the notice into evidence.

The tenant did not dispute the notice because he stated that he had not received a notice to end tenancy. However, the tenant agreed that as of the date of this hearing he owed the landlord partial rent for January 2019 and full rent for the months of February, March and April 2019, for a total amount of unpaid rent of \$8,720.00. The tenant continues to occupy the rental unit.

### **Analysis**

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the landlord stated that she had served the tenant with a notice to end tenancy and the tenant denied having received one. Even if I accept that the landlord served the tenant with a notice to end tenancy for non-payment of rent, in the absence of a copy of the notice before me, I am unable to determine whether the notice was served in the proper format and whether the notice is valid.

Section 52 of the *Residential Tenancy Act* states that in order to be effective, a notice to end a tenancy must be in writing and when given by a landlord to a tenant, must be in the approved form.

Since the landlord has not proven that she served the tenant with a proper notice, the landlord's application for an order of possession is dismissed. Since the tenancy has not yet ended, the landlord's application to retain the security deposit is dismissed with leave to reapply.

During the hearing the tenant agreed that he owed rent to the landlord. The tenant agreed that he had not paid full rent for January and had not paid any rent for the months of February, March and April 2019 in the total amount of \$8,720.00. I find that the landlord is entitled to recover unpaid rent in this amount.

Since the landlord has proven her case for unpaid rent, I find that she is entitled to recover the filing fee of \$100.00.

Overall the landlord has established a monetary claim for \$8,820.00 which consists of unpaid rent of \$8,720.00 plus \$100.00 for the filing fee. I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for \$8,820.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$8,820.00**.

Dated: April 08, 2019

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Residential Tenancy Branch