



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR FF / CNR MNDC OLC FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

At the outset of the hearing, the parties confirmed that the tenants vacated the rental unit as of May 26, 2019; therefore, the landlord's application for an order of possession and the tenants' application to cancel the 10 Day Notice were moot.

### Preliminary Issue – Naming of parties and End of Tenancy

At the outset of the hearing, the tenant J.B. (the “tenant”) requested that the co-tenant A.B. be struck as a party from this dispute as she is a minor. The tenant testified that A.B. is only 18 years old.

The landlord argued that both the tenants signed the lease agreement and they were not advised at the time that A.B. is less than 19 years of age. The landlord argues that it was the tenant that requested A.B. be included as a co-tenant.

The tenant has not provided any legal identification in support of A.B. being less than 19 years of age. The tenant has also not submitted or referred to any provision of the Act or legal precedent which supports her argument that minors cannot enter into and be responsible for their obligations under a lease agreement.

The tenant’s request to have A.B.’s name struck from these proceedings is dismissed.

### Issues

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to compensation for loss and to recover the filing fee?

### Background and Evidence

The tenancy began on December 1, 2018 with a monthly rent of \$1600.00 plus \$100.00 fixed amount for utilities payable on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$850.00 at the start of the tenancy which the landlord continues to hold.

The landlord’s monetary claim is for outstanding rent and utilities in the total amount of \$1700.00 for the month of May 2019. The landlord testified that the tenant did not pay any rent or utilities for this month. The landlord testified that the tenant sent an e-transfer for a partial rent payment of \$850.00 on April 22, 2019 but he did not receive this amount. The landlord testified that on April 23, 2019 he received a call from the tenant’s bank notifying him of fraudulent activity on the tenant’s account. The landlord testified that as the account was private it was difficult to obtain any further information from the tenant’s bank. The landlord testified that he was advised that an Interac e-transfer can be intercepted if the password is not very secure. The landlord testified

that he was advised the transfer would still show as being sent on the e-transfer receipt and statement. The landlord testified that he was advised that the tenant could be directly reimbursed the defrauded amount if she were to pursue it with her bank. The landlord submitted his bank account statements for April and May 2019 which reflects the last e-transfer he received from the tenant was on April 1, 2019. The landlord testified that this is the only account under his name. The landlord testified he requested the tenant's assistance in resolving the matter with her bank but she refused. The landlord also submitted correspondence he had with the tenant's bank which confirms that he received a call from their fraud department on April 23, 2019 in which it was communicated to him that the e-transfer was received by an alternative e-mail address which was not recognized.

The tenant testified that there is no such thing as a stolen e-transfer and that the landlord's documents are a farce. The tenant submitted the e-mail notification she received notifying her that the transfer had been accepted and deposited by the landlord. The tenant also submitted her bank statements showing the amount as being withdrawn from her account. The tenant argues it is the landlord's problem if the rent payment did get stolen. The tenant did not dispute that the other half of May 2019 rent and utilities amount due remained outstanding.

The tenant's monetary compensation claim is for moving expenses and difference in rent paid under her new lease agreement. The tenant argues the 10 Day Notice was uncalled for and she was falsely evicted. The tenant also argued she had no choice but to move due to harassment and threats from the landlord.

The landlord argues the tenant moved out on her own free will and denies any harassment or threats made towards the tenant.

### Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The onus is on a tenant under the Act to pay rent. The onus to prove that rent was paid is also on the tenant. The landlord has submitted an account statement which reflects the rent payment sent by the tenant by e-transfer on April 22, 2019 was not deposited to

his account. The landlord also submitted correspondence he had with the tenant's bank to confirm there was fraudulent activity detected on her account. The tenant has not submitted any correspondence that she has attempted to rectify the issue with her bank. On a balance of probabilities, I accept the landlord's testimony and evidence and find that the payment of \$850.00 sent by the tenant by e-transfer has not been received by the landlord. The tenant is still responsible to pay this amount to the landlord and the tenant can follow up with her bank in regards to her e-transfer being fraudulently intercepted. The tenant also did not dispute that the other half month's rent and utilities remained outstanding. The landlord is awarded \$1700.00 as claimed.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1800.00.

Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the \$850.00 security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$950.00.

With respect to the tenant's claim for compensation, I find the tenant was legally issued a 10 Day Notice as she failed to pay rent in full for May 2019. The tenant also vacated on her own free will although she had a hearing pending with respect to her application to cancel the 10 Day Notice. The tenant has also provided insufficient evidence in support of her claims that she was forced to vacate due to harassment and threats from the landlord.

The tenants' application is dismissed in its entirety without leave to reapply.

### Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$950.00. Should the tenants 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: June 18, 2019

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Residential Tenancy Branch