



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PETCO PROPERTIES INC DOING BUSINESS 1907 MANOR and  
[tenant name suppressed to protect privacy]

## **DECISION**

Code MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary and procedural matter

The first matter I must determine is whether the Act has jurisdiction of this matter.

The landlord submits that the Act does not apply to this matter as they are a rooming house and the occupants do not have kitchens. The only kitchen on the premises the occupants do not have access.

The tenant submits that they have their own self contained room, which has its own bathroom and they have a fridge, microwave and hotplate. The tenant submits the Act applies to this matter.

The landlord argued there is no cooking facilities in the room.

The Act – Part 1- Introductory Provisions, defines in section 4 of the Act what this Act does not apply to.

I find that this matter, a rooming house, does not fall within section 4 of the Act, whether or not there are cooking facility in the rooms. I find the Act applies to this matter. Therefore, I accept jurisdiction of this matter.

### Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The parties agreed that the tenant rents a room for the amount of \$851.00 per month payable on the first of each month. The tenant is still living in the premise.

The landlord testified that the tenant refuses to pay all rent owed for July 2019. The landlord stated they received a partial payment in the amount of \$200.00 and the balance owed is \$651.00.

The tenant testified that they did not pay all rent for July 2019, as they believe the landlord breached the Act. The tenant confirmed that they did not have the authority under the Act, such as an order from an Arbitrator authorizing the rights to withhold any portion of rent.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

*26 (1) 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 evidence of both parties was the tenant did not pay all rent owed for July 2019, and the balance owed was \$651.00.

The evidence of the tenant was that they did not pay the rent because they feel the landlord has breached the Act. However, the tenant did not have the authority under the Act, such as an order from an Arbitrator to deduct any portion of rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so.

I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for July 2019, in the amount of **\$651.00**.

I find that the landlord has established a total monetary claim of **\$751.00** comprised of the above described amount and the \$100.00 fee paid for this application.

**As I have found the tenant has failed to pay rent in accordance with the Act, and the tenancy has not legally ended. I find the landlord is entitled to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, for rent owed for the above noted month and any subsequent unpaid rent.**

**The tenant is cautioned that they must pay the outstanding rent within 5 days of receiving the notice to end tenancy, as I have found they had no legal authority to**

**withhold rent. A copy of this decision may be submitted as evidence at any future hearing.**

Conclusion

The landlord is granted a monetary order.

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, 2019

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Residential Tenancy Branch