



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sutton Max Realty & Property  
Management and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC MNR MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 21, 2019. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord (agents of) attended the hearing. The Tenant did not attend the hearing. The Landlord stated that they sent (on September 17, 2019) the Tenant a copy of the Notice of Hearing and evidence by registered mail to the forwarding address provided to them on the move out inspection report. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on September 22, 2019, the fifth day after their mailing.

The Landlord also sent the Tenant a copy of their amendment and updated evidence, by registered mail on November 5, 2019. Proof of mailing was provided into evidence. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on November 10, 2019, the fifth day after their mailing. I turn to the following Rule of Procedure:

### **4.6 Serving an Amendment to an Application for Dispute Resolution**

*As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.*

*The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure. In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) **not less than 14 days before the hearing.***

Since the Tenant is deemed to have been served with this amendment on November 10, 2019, I find it was not served within the acceptable time frame to have it incorporated as part of this proceeding. The Tenant must have received the amendment by November 7, 2019, in order for it to be added to today's hearing. I note the amendment was filed to increase the monetary claim to include and explain the different strata fine violations. I note the Landlord included one or two of these strata fines as part of their initial application. However, there were many more that were laid out in the amendment. Since the strata fines were issued for similar reasons, and since the bulk of these strata violations were only submitted as part of the late amendment, I dismiss all matters pertaining to the strata fines, with leave to reapply. The only monetary issue that I will address in this hearing is the Landlord's request for monetary compensation for unpaid rent.

The Landlord is granted leave to reapply for the strata fine issues. I encourage the Landlord to ensure the Tenant is served with the application, evidence, and any amendments in accordance with the rules of procedure, should they decide to file another application to recover the unpaid strata fines.

Further, I note the Landlord stated that the Tenant moved out after they had filed this application, and they no longer need an order of possession. As such, I dismiss the Landlord's application for an Order of Possession based on a One Month Notice to End Tenancy for Cause, without leave, as the issue is now moot.

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.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?

- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord stated that monthly rent was \$2,080.00 and was due on the first of the month. The Landlord holds a security deposit in the amount of \$1,000.00. The Landlord stated that they did not receive any rent for the month of September 2019. The Landlord stated that the Tenant did not move out until September 9, and a move-out inspection was done on September 10, 2019.

The Landlord stated that they were unable to re-rent the unit for the remainder of September and they are seeking to recover this amount. The Landlord further stated that they were never given formal written notice as to when the Tenant would be moving out, and only got a last minute call from the Tenant saying that they would be moving out in a couple of days.

### 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 Tenant. 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.

The Landlord is seeking to recover lost rent for September 2019. I accept that the Landlord's undisputed testimony that the Tenant failed to pay rent for September and moved out part way through the month. I also accept the Landlord's undisputed testimony that the Tenant only informed the Landlord that they would be leaving a day or two before when they actually moved out. I find the Tenant is responsible for rent for September 2019, and I award the Landlord \$2,080.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make

the application for dispute resolution. Also, I authorize the Landlord to retain the security 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	\$2,080.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$2,180.00
LESS: Security and Pet Deposit	\$1,000.00
<b>Total Amount</b>	<b>\$1,180.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$1,180.00**, 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: November 21, 2019

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Residential Tenancy Branch