



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 1:50 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord testified that on September 20, 2019, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking and a letter from Canada Post as proof of service.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Subsequently on November 13, 2019, the landlord uploaded invoices in support of its claim for damage. The landlord acknowledged in the hearing that a copy of this evidence was not sent to the respondent. The landlord was advised that I would not be able to accept or rely on any evidence that was not served on the respondent. The

landlord chose to withdraw its claim for damages and proceed with the claim for unpaid rent only.

The landlord's claim for damage to the rental unit is therefore withdrawn with leave to reapply.

### Issues

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

### Background and Evidence

The tenancy began on June 1, 2016. The monthly rent at the end of the tenancy was \$893.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that they had served the tenant with a One Month Notice to end Tenancy with an effective date of September 30, 2019; however, the tenant vacated on September 2, 2019 without any notice. The landlord testified the tenant did not pay any rent for September 2019.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

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.

*Section 45(1) of the Act sets out that:*

*A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

- (a) is not earlier than one month after the date after the landlord receives the notice, and  
(b) is before the day in the month...that rent is payable under the tenancy agreement.

A notice given under this section must be in writing and comply with the form and content requirements of section 52 of the Act.

The tenant did not provide any written notice to the landlord before vacating on September 2, 2019. The notice to end tenancy issued by the landlord was not effective until September 30, 2019 and the tenant was responsible to pay rent up until this date. I accept the landlord's claim for unpaid rent in the amount of \$893.00 for the month of September 2019.

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 \$993.00.

The landlord continues to hold a security deposit and pet deposit in the amount of \$400.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$593.00.

### Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$593.00. Should the tenant 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: January 16, 2020

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Residential Tenancy Branch