



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, 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 bailiff fees, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

### Preliminary matters

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on September 17, 2019, a Canada post tracking number was provided as evidence of service. I find the tenant was deemed served five days after it was mailed.

Further, the tenant responded to the landlord’s application on January 7, 2020. The tenant writes in a letter that they would not be at the hearing as they are in the process of being deported. The letter did not request an adjournment. The tenant did not send an agent to act on their behalf. Therefore, I find it appropriate to proceed with the hearing in the absent of the tenant.

At the outset of the hearing, I clarified the landlord's application as the amount claimed for unpaid rent did not match the amount claimed of \$600.00 in their application. The landlord stated that amount of \$600.00 was the amount of the security deposit paid and they are seeking to offset that amount with the unpaid rent.

I am satisfied that the details of dispute clearly set in the landlord was seeking to recover unpaid rent for December 2018 up to and including March 2019. Therefore, I will consider unpaid rent from for the above months. I find this not prejudicial to the tenant as rent is the most basic term of a tenancy agreement.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

#### Issues to be Decided

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

Is the landlord entitled to monetary compensation for bailiff fee?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

#### Background and Evidence

The tenancy began on November 1, 2018. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenant paid a security deposit of \$600.00. The tenancy ended on March 14, 2019.

The landlord testified that the tenant failed to pay rent for December 2018. The landlord stated that the tenant was served with a 10 Day Notice to End the Tenancy, which the tenant disputed. The landlord stated they attended a hearing on January 20, 2019, and the tenant's application was dismissed, and they received an order of possession on January 23, 2019. I have noted the filed number of this decision on the covering page of this decision.

The landlord testified that the tenant went to Supreme Court and the order of possession was suspended. The landlord stated that the tenant's application in

Supreme Court was dismissed and the order of possession was enforced by the Bailiff on March 14, 2019. Filed in evidence are Supreme Court documents.

The landlord testified that the tenant did not pay any rent from December 2018 to March 14, 2019. The landlord seeks to recover unpaid rent in the amount of \$6,400.00.

The landlord testified that they seek to recover the cost of bailiff fees in the amount of \$2,052.53. Filed in evidence is a copy of the bailiff fees.

### 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.

In this case the parties were at a hearing on January 20, 2019 and a decision was made on January 23, 2019. The Arbitrator found that the tenants had failed to prove rent was paid for December 2018 and January 2019. The tenants' application to cancel the notice to end tenancy for unpaid rent was dismissed and the landlord was granted an order of possession. I find the tenant breached the Act, when they failed to pay rent, and this caused losses to the landlord. I find the landlord is entitled to recover unpaid rent for the above months, in the amount of **\$3,200.00.**

I am further satisfied that the tenant did not pay any rent for February 2019 and March 2019. I find the tenant breached the Act, when they failed to pay rent, and this caused losses to the landlord. I find the landlord is entitled to recover unpaid rent for the above months, in the amount of **\$3,200.00.**

I am further satisfied that the tenant did not vacate the premises in accordance with the order of possession issued on January 23, 2019 and the bailiff had to remove the tenant from the premise, and this caused losses to the landlord. I find the landlord is entitled to recover bailiff fees in the amount of **\$2,025.53**.

I find that the landlord has established a total monetary claim of **\$8,525.53** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$600.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 of the Act for the balance due of **\$7,925.53**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

#### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 14, 2020

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Residential Tenancy Branch