



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNDC 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 and for compensation for loss 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. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

No issues were raised with respect to the service of the application and evidence on file.

### Issues

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

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 May 1, 2019 with a monthly rent of \$1332.00 payable on the 1<sup>st</sup> day of each month. The tenant was also responsible for 50% of the utilities. The tenant paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold.

The landlord is claiming the tenant's wife sent an e-mail on October 5, 2019 stating they would be terminating the lease at the end of October 2019. The landlord is claiming loss of rent for November 2019. The landlord testified she advertised the unit immediately but was not able re-rent the unit for the month of November. Copies of the advertisement were submitted as evidence. The landlord is claiming \$1320.00 for this loss.

The landlord is claiming \$133.16 to replace two keys and a garage remote. The landlord testified these were not returned. Receipts for replacement cost were submitted.

The landlord is claiming unpaid gas and hydro bills. The hydro claim is for 145.50. The landlord was not able to clearly articulate the amount claimed for gas nor was this amount clear on the monetary order worksheet.

The tenant acknowledged providing notice by e-mail in early October 2019. The tenant acknowledged keys were not returned because the landlord was withholding the security deposit. The tenant acknowledged hydro was unpaid as claimed but disputed the gas claim and testified this bill was paid.

### 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 provided a notice to the landlord by e-mail on October 5, 2019 to end the tenancy effective October 31, 2019. The earliest possible effective date for the tenant's notice to end this tenancy pursuant to section 45 of the Act was November 30, 2019. The tenant did not provide sufficient notice to end the tenancy therefore the landlord suffered a loss. The tenant's notice was also not in the approved form. I accept the landlord's claim for loss of rent in the amount of \$1320.00 for the month of November 2019.

The tenant acknowledged the keys were not returned; therefore, I accept the landlord's claim for loss as claimed in the amount of \$133.16.

The tenant acknowledged Hydro was not paid; therefore, I award the landlord \$145.50 as claimed. The landlord's claim for unpaid gas is dismissed as it was not clear what the landlord was claiming for this loss.

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 \$1698.66.

The landlord continues to hold a security deposit in the amount of \$600.00. 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 \$1098.66.

### Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$1098.66. 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: April 06, 2020

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Residential Tenancy Branch