



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DON WON APARTMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord ZC (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 4, 2019 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on both December 4, 2019 and again the next day on December 5, 2019. Two registered mail tracking numbers were provided and have been referenced on the style of cause for ease of reference and have been identified as 1 and 2. According to the online registered mail tracking website, registered mail package 1 was returned to the sender and marked as "unclaimed", while registered mail package 2 was refused by the tenant and eventually returned to the sender. Based on the undisputed evidence before me, I find the tenant was sufficiently served under the Act as of December 6, 2019, which is the date the registered mail package 2 was refused at the post office. Given the above, I find this application to be unopposed by the tenant as the tenant was duly served and did not attend the hearing.

### Preliminary and Procedural Matter

The landlord confirmed the email addresses for both parties at the outset of the hearing and stated that they understood that the decision would be emailed to them. Any applicable orders will be emailed to the landlord for service on the tenant.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 1, 2019 and was not scheduled to revert to a month to month tenancy until October 31, 2020. The tenant's monthly rent was \$1,450.00. The tenant paid a security deposit of \$725.00 at the start of the tenancy, which the landlord continues to hold.

The landlord is seeking unpaid rent of \$1,450.00 for December 2019, plus the filing fee. The landlord is also seeking to offset any amount owed with the tenant's security deposit. The agent testified that the tenants advised them by text on November 29, 2019 that they were vacating the rental unit. The agent stated that they received the rental unit keys on December 1, 2019.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant refused service of the Notice of Hearing, application and documentary evidence on December 6, 2019, and the Act does not allow a party to refuse service, and given my finding that the tenant was served as of December 6, 2019 and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful in the amount of **\$1,550.00**, which includes the recovery of the cost of the filing fee pursuant to section

72 of the Act in the amount of \$100.00 as the landlord's application is successful. I have considered the undisputed testimony of the agent and that the application was unopposed by the tenant. The landlord continues to hold the tenant's security deposit of \$725.00, which has not accrued any interest to date.

I find the tenant breached section 26 of the Act by failing to pay \$1,450.00 for December 2019 rent due on December 1, 2019. I find the tenant is liable for that amount owing. Therefore, I authorize the landlord to retain the tenant's full security deposit of \$725.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the balance owing of **\$825.00**.

### Conclusion

The landlord's application is fully successful.

The landlord has proven a claim of \$1,550.00. The landlord has been authorized to retain the tenant's full security deposit of \$725.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$825.00. Should the landlord wish to enforce the monetary order, the landlord must first serve the tenant with the monetary order and then may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2020

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Residential Tenancy Branch