



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, OPM, FFL

### Introduction

On June 4, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession for the rental unit; for a monetary order for unpaid rent or utilities; for money owed or compensation for damage or loss; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and his agent attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding by registered mail sent on June 5, 2020. The Landlord provided a copy of the registered mail receipt and tracking information that indicates the mail was delivered. The Landlord testified that he also posted a letter to the Tenant’s door informing the Tenant of the upcoming hearing.

Based on the Landlords affirmed testimony I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary and Procedural Matters

During the hearing the Landlord withdrew his claim for an order of possession based on a mutual agreement to end tenancy. The Landlord also withdrew his claim for money owed or compensation for damage or loss.

The Landlord requested that his application be amended to include a request to keep the security deposit towards unpaid rent.

The hearing proceeded based on the Landlord's claims for a monetary order for unpaid rent and utilities and his request to keep the security deposit.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Can the Landlord keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The Landlord testified that the tenancy began on November 1, 2018, as a six-month fixed term tenancy that continued thereafter on a month to month basis. The Tenant is to pay rent in the amount of \$2,100.00 to the Landlord by the first day of each month. The Landlord testified that the monthly rent increased to \$2,150.00 each month effective December 2019. The Landlord provided a copy of the original tenancy agreement.

The Landlord testified that the Tenant has not paid the rent owing under the tenancy agreement for the months of April; May; and June 2020.

The Landlord testified that the Tenant owes the following amounts of rent:

- April 2020, in the amount of \$150.00
- May 2020, in the amount of \$2,150.00
- June 2020, in the amount of \$2,150.00

The Landlord seeks a monetary order for unpaid rent in the amount of \$4,450.00

The Landlord testified that the Tenant is still living in the rental unit.

The Landlord also testified that the Tenant owes \$350.00 each month towards utility payments. The Landlord testified that the Tenant has not paid for utilities for three months. The Landlord testified that the Landlord did not issue a demand letter to the Tenant for the payment of utilities.

#### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I accept the Landlord's evidence that the tenancy agreement requires the Tenant to pay rent of \$2,150.00 each month.

I find that the Tenant has failed to pay the rent owing under the tenancy agreement for the three months listed above. I find that the Tenant owes the Landlord \$4,450.00 in unpaid rent.

I find that the utility payments cannot be considered to be unpaid rent because the Landlord did not issue a written demand for payment as required under section 46(6) of the Act. This part of the Landlord's claim is dismissed with leave to reapply.

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

I authorize the Landlord to keep the security deposit of \$1,000.00 towards the award of unpaid rent.

I find that the Landlord has established a monetary claim of \$4,550.00 comprised of \$4,450.00 in unpaid rent for the above-mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$1,000.00 towards the award of \$4,550.00, I find that the Landlord is entitled to a monetary order for the balance of \$3,550.00. This monetary 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 established that the tenancy agreement requires the Tenant to pay rent of \$2,150.00 each month. The Tenant failed to pay the rent owing under the tenancy agreement and is living in the rental unit.

I find that the Tenant owes the Landlord \$4,450.00 for unpaid rent and the cost of the filing fee.

After setting off the security deposit of \$1,000.00 towards the award of \$4,550.00, I find that the Landlord is entitled to a monetary order for the balance of \$3,550.00.

The Landlord is granted a monetary order in the amount of \$3,550.00.

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: June 30, 2020

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Residential Tenancy Branch