



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FFL

### Introduction

On August 21, 2020, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for unpaid rent; to keep a security deposit and/or pet damage deposit, and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenants attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. The Landlord and Tenant provided affirmed oral testimony and were given an opportunity to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Can the Landlord keep the security deposit towards the claim?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began in September or October of 2019. Rent in the amount of \$1,900.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$950.00. The Landlord provided a copy of the tenancy agreement.

### Loss of Rent

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the months of January 2020, February 2020, and a loss of rent for March 2020. The Landlord testified that he issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the Tenant for unpaid rent in the amount of \$5,700.00. The Landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 12, 2020 that he posted on the Tenant's door.

The Landlord testified that the Tenant never provided the Landlord with written notice to end the tenancy. The Landlord testified that the Tenant vacated the unit on March 12, 2020.

The Landlord is seeking to recover three months of unpaid rent in the amount of \$5,700.00.

The Landlord has applied to keep the \$950.00 security deposit towards his claim for unpaid rent.

In reply, the Tenant testified that she vacated the rental unit on March 25, 2020. She testified that she never received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 12, 2020.

The Tenant testified that she was late paying the rent and that she paid January 2020 rent to the Landlord in person using cash in January 2020. She testified that she paid the February 2020 rent to the Landlord in person using cash on February 3, 2020.

The Tenant testified that she did not expect to be responsible for paying March 2020 rent. She testified that she moved out on February 25, 2020 because there were drug dealers living below her and the Landlord would not deal with her complaints.

When the Tenant was asked if she has any evidence to support her testimony that she paid the rent in cash in January and February she replied no. The Tenant was asked to provide the date she paid the January rent in cash to the Landlord. The Tenant replied that she does not know the date. When the Tenant was asked whether she received a rent receipt, she replied that the Landlord did not provide her one.

The Landlord replied that the Tenant did pay the rent in cash on a couple of occasions and he offered to issue a receipt and she declined, so receipts were not issued.

The Landlord testified that the Tenant is not telling the truth and the Landlord asked to provide text messages he received from the Tenant that prove the rent was not paid. When the Landlord was asked what evidence he would produce; he replied that he has a text message from the Tenant dated February 3, 2020 at 1:09 pm that states she will be getting him \$4,000.00 of which \$200.00 will go towards next months rent.

Since I find that the text message evidence has a high probative value on proving the issue, the Landlord was permitted to submit the text messages sent between him and the Tenant. The Landlord was also ordered to send a copy of his evidence to the Tenant.

The Landlord submitted copies of text messages exchanged with the Tenant from February 3 to February 25, 2020 regarding payment of outstanding rent.

### Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

Section 26 of the Act provides 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.

After considering the evidence of the Landlord and Tenant, and on balance of probabilities, I make the following findings:

### Loss of Rent

I have reviewed the tenancy agreement and considered the parties testimony and I find that the Tenant owes the Landlord \$1,900.00 rent each month to be paid by the first day.

I accept the Tenant's testimony that she vacated the rental unit on February 25, 2020; however, I find that the Tenant failed to give the Landlord proper written notice that she was ending the tenancy. The earliest date that the Tenant could have legally ended the tenancy is March 31, 2020. I find that the Tenant breached the Act by not giving proper notice and is responsible for the Landlord's loss of March 2020 rent.

I also find that the Tenant failed to pay the Landlord the rent owing under the tenancy agreement for the months of January 2020 and February 2020. The Tenant's testimony that she paid the rent in cash to the Landlord in January and February was not persuasive and conflicts with the Landlord's testimony and evidence that the rent was not paid. Upon review of the text messages exchanged by the parties, I find that the text messages document 22 separate days where the Landlord is trying to get the Tenant to pay the rent owing and the Tenant responds with a myriad of promises and excuses. I find that the Tenant did not pay the rent to the Landlord in January 2020; and did not pay the rent on February 3, 2020 as she testified. I find that the rent had not been paid up to February 25, 2020 which is the date she moved out without giving proper notice.

I find that the Tenant owes the Landlord \$5,700.00 in unpaid rent for the above-mentioned months.

I authorize the Landlord to keep the security deposit of \$950.00 towards the unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was successful with his application. I order the Tenant to repay the amount of \$100.00 for the cost of the application.

The Landlord has established a monetary claim in the amount of \$5,800.00. After setting off the security deposit of \$950.00 against the award of \$5,800.00, I find that the Tenant owes the Landlord the balance of \$4,850.00.

I grant the Landlord a monetary order in the amount of \$4,850.00. The order must be served on the Tenant and may be enforced in the Provincial Court.

Conclusion

The Landlord established a claim for unpaid rent and the cost of the filing fee in the amount of \$5,800.00. After setting off the security deposit of \$950.00 against the award of \$5,800.00 I find that the Tenant owes the Landlord the balance of \$4,850.00

The Landlord is granted a monetary order in the amount of \$4,850.00.

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: December 24, 2020

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Residential Tenancy Branch