



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FFL

### Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent, and compensation for damage and cleaning; and, authorization to retain the tenant's security deposit.

The landlord appeared for the hearing; however, there was no appearance on part of the tenant. Accordingly, I explored service of hearing materials upon the tenant.

A Substituted Service Order was issued on November 13, 2020 permitting the landlords to serve the tenant via email using his business email address. The landlord testified that she sent the proceeding package and Substituted Service Order to the tenant's business email address on November 18, 2020. The landlord provided an image of the email sent to the tenant and I was satisfied the landlord served the proceeding package in accordance with an order of the Director. Therefore, I continued to hear this matter without the tenant present.

As for the landlord's evidence, the landlord acknowledged that they did not send it to the tenant on the mistaken belief the Residential Tenancy Branch had included the evidence in the proceeding package. Since the landlords had not served the tenant with their evidence, the landlord requested withdrawal of their damage and cleaning claim, with liberty to reapply. Further, since the tenant had not yet provided a forwarding address, the landlord requested that the security deposit remain in trust, to be administered in accordance with the Act. The landlord sought to proceed to deal with the claim for unpaid rent since the tenant already has a copy of the tenancy agreement and the parties were not in dispute as to the amount of unpaid rent.

Pursuant to section 39 of the Act, the tenant has one year to provide the landlord with a forwarding address in writing and if the tenant does not then the landlords may retain

the security deposit and the tenant's right to its return is extinguished. If the tenant does provide a forwarding address to the landlord in writing within one year of the tenancy ending the landlords have 15 days after receiving the address to take action to administer disposition of the security deposit in accordance with section 38 of the Act.

I granted the landlords requests for amendment as I find they do not prejudice the tenant. Accordingly, the security deposit remains in trust for the tenant at this time and the landlord's damage and cleaning claims are dismissed with leave to reapply and I proceed to deal with the landlord's claim for unpaid rent.

#### Issue(s) to be Decided

1. Have the landlords established an entitlement to recover unpaid rent from the tenant in the amount claimed?
2. Award of the filing fee.

#### Background and Evidence

The landlord testified that the tenancy started October 1, 2018 and the tenant paid a security deposit of \$1600.00. The tenant was required to pay rent of \$3200.00 on the first day of every month. The tenancy ended on July 31, 2020 pursuant to the tenant ending the tenancy.

As for unpaid rent, the landlord testified that the landlords received only \$2600.00 for the month of April 2020 and \$2900.00 for the month of May 2020, including rental assistance from the government on behalf of the tenant, leaving an outstanding balance of \$900.00 for these two months. For the month of July 2020, the landlords only received the \$300.00 payment from the government and nothing from the tenant, leaving a balance owing of \$2900.00 for July 2020. In total, the tenant failed to pay and the landlords seek recovery of unpaid rent of \$3800.00.

#### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold or otherwise not pay the rent due to the landlord.

I accept the unopposed submissions before me that the tenant was required to pay rent of \$3200.00 on the first day of every month up to and including the month of July 2020. I further accept the unopposed evidence before me that the tenant failed to pay rent in the sum of \$3800.00.

I was not provided any evidence to suggest the tenant had the right to not pay rent that was due under the tenancy agreement. Although the landlords were precluded from evicting the tenant for the subject months due to government orders put in place due to the Covid-19 pandemic, the tenant remains liable to pay the unpaid rent.

Since the tenancy has ended, I find the landlords entitled to a Monetary Order for the unpaid rent of \$3800.00. I further award the landlords recovery of the \$100.00 filing fee paid for this application.

In keeping with the above, I provide the landlords with a Monetary Order in the sum of \$3900.00 to serve and enforce upon the tenant.

### Conclusion

The landlords are provided a Monetary Order for unpaid rent and recovery of the filing fee in the sum of \$3900.00.

The security deposit remains in trust at this time, to be administered in accordance with sections 38 and 39 of the Act. The landlords' claim for damage and cleaning is dismissed with leave to reapply.

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 20, 2021

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Residential Tenancy Branch