



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on April 29, 2021, a Canada post tracking number was provided as evidence of service. The landlord stated the package was returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Refusal or neglect to pickup the packages does not override the deemed served provision of the Act.

The landlord testified that they also provide the tenant with the copy of the Application for Dispute Resolution and Notice of Hearing and all attachments. Filed in evidence is a copy of the email to the tenant.

The landlord appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on December 4, 2021. Rent in the amount of \$1,900.00 was payable on the 4<sup>th</sup> day of each month. The tenant paid a security deposit of \$950.00. The tenancy ended on April 18, 2021.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 21, 2021 as the tenant had failed to pay rent in the amount of \$4,050.00 and utilities in the amount of \$72.31, for a total of \$4,122.31.

The landlord testified that the tenant was to pay the outstanding amount in payments; however, the cheque they received from the tenant in the amount of \$2,022.00 was returned NSF. Filed in evidence is a copy of the NSF cheque.

The landlord testified that the tenant did not pay rent for April 2021 or the utilities owed for April 2021, for a total amount of \$1,973.00. The landlord seeks to recover unpaid rent in the total amount of \$6,095.31.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the undisputed testimony of the landlord that the tenant failed to pay rent and utilities owed. This is supported by the documentary evidence. I find the tenant breached section 26 of the Act when they failed to pay the rent. I find the landlord is entitled to recover unpaid rent and utilities in the amount of **\$6,195.31**.

I find that the landlord has established a total monetary claim of **\$6,295.31** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$950.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$5,245.31**. This 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 is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: October 20, 2021

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Residential Tenancy Branch