



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord attended the hearing; however, the tenant did not attend.

The landlord stated he served the tenant with his Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on July 22, 2021. The landlord said he mailed the application package to the forwarding address provided by the tenant on the move-out condition inspection report (Report). The landlord filed a copy of the registered mail receipt showing the tracking number.

The landlord said that he also has hand-delivered documents to the tenant at the address used to send the registered mail.

I accept the landlord's undisputed evidence and find that the tenant was served the application and notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and/or arguments are reproduced here.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to retain her security deposit to partially satisfy any monetary award, and to recover the cost of the filing fee?

### Background and Evidence

This tenancy originally began on November 15, 2019, for a monthly rent of \$1,450, with the tenant paying a security deposit of \$725. Filed in evidence was a copy of the written tenancy agreement.

The landlord said the tenancy ended on or about June 30, 2021, and the landlord has retained the security deposit, having made this claim against the deposit.

The landlord testified that the tenant was served a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) on or about April 30, 2021, and she in turn immediately put a hold on the rent cheque for May 2021. The tenant failed to pay any more monthly rent through the end of the tenancy, according to the landlord.

The landlord submitted that the tenant was obligated to pay the monthly rent for May 2021, and failed to do so. The landlord did not claim unpaid rent for June 2021, because the tenant was entitled to the equivalent of one month's rent because of the Notice being issued to her.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, 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 party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Despite being properly served with the landlord's application package, the tenant failed to attend the hearing. The landlord's evidence is therefore uncontested.

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, unless the tenant has a right under the Act to deduct all or a portion of the rent. There is insufficient evidence before me that tenant had a right to deduct all or a portion of the rent.

I find that the landlord submitted sufficient evidence to show that under the terms of the written tenancy agreement, the tenant owed, but did not pay, the monthly rent for May 2021.

As a result, I therefore find the landlord has established a monetary claim of **\$1,450**, as noted above.

Due to his successful application, I grant the landlord recovery of his filing fee of **\$100**.

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order of **\$825** in favour of the landlord as follows:

ITEM	AMOUNT
1. Unpaid rent for May, 2021	\$1,450.00
2. Filing fee	\$100.00
3. <i>Less security deposit</i>	<i>(\$725.00)</i>
<b>TOTAL</b>	<b>\$825.00</b>

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this order as soon as possible to be enforceable. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant is cautioned that enforcement costs are subject to recovery from the tenant.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 21, 2022

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Residential Tenancy Branch