



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNR, FF

### Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested a Monetary Order for unpaid rent and to recover the filing fee.

Only the Landlord appeared at the hearing. She gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that the Tenants failed to provide a forwarding address at the end of the tenancy, although she stated the Tenant, M.S., continued to return to the rental unit to retrieve their mail for a period of time following the end of the tenancy. The Landlord testified that on July 16, 2016 she served both Tenants by registered mail at the rental address. She further confirmed that to her knowledge M.S. received the registered mail she sent, although the package sent to the Tenant C.G. was returned unclaimed. A copy of the tracking number for C.G. is included on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline, "12. Service Provisions"* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the Act documents served this way are deemed served five days later. I find that the Tenants continued to use the address of the rental unit as their mailing address for a period of time following the tenancy and that the Landlord was correct to serve them at this address. As the Tenants were served by registered mail, I find they were duly served as of July 21, 2016.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are

reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to Monetary Compensation for unpaid rent?
2. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began December 1, 2015. Monthly rent was payable in the amount of \$1,100.00. Also introduced in evidence was a copy of the residential tenancy agreement confirming the terms of the tenancy.

In the within hearing the Landlord sought monetary compensation in the amount of \$1,450.00 representing outstanding rent. Introduced in evidence was a Monetary Order Worksheet wherein the Landlord confirmed the Tenants paid the sum of \$3,900.00 for rent from January 2016 to May 31, 2016; as monthly rent was due in the amount of \$1,100.00 per month, the sum of \$5,500.00 should have been paid, leaving a balance of \$1,600.00 owing. For reasons the Landlord could not explain, she claimed the sum of \$1,450.00 on her application, when the amount owing was in fact \$1,600.00.

The Landlord stated that the Tenants separated their monthly rent payments such that at the end of the tenancy \$300.00 was owing by M.S. and \$1,300.00 was owing by C.G. She further stated that she had ongoing and repeated discussions with the Tenants about the amounts owing, and that the Tenant, M.S., had attempted to help C.G. pay his share. She submitted that at all times the Tenants were aware they were in arrears of their rent payments, and that this inability to pay the required amount was a reason for not extending the tenancy.

### Analysis

In a claim for damage or loss under section 67 of the *Act* or the 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 her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party 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.

Based on the undisputed testimony and evidence of the Landlord, and on a balance of probabilities, I find that she has met the burden of proving her monetary claim. I find that the Tenants were obligated, by the terms of their tenancy agreement, to pay rent in the amount of \$1,100.00 per month. I further find that for many months the Tenants failed to pay the full amount owing, such that at the end of the tenancy, the sum of \$1,600.00 was owed for rent.

I accept the Landlord's testimony that the Tenants were aware of this deficit. While the amount owed is \$1,600.00, the Tenants were only given notice that the Landlord sought \$1,450.00, and as such I limit the amount recoverable to \$1,450.00. The Landlord is at liberty to reapply for the balance of \$150.00.

The Landlord, having been substantially successful, is entitled to recover her filing fee of \$100.00.

#### Conclusion

I grant the Landlord a Monetary Order for the amount of **\$1,550.00** representing \$1,450.00 in unpaid rent and the filing fee. The Landlord must serve the Order on the Tenants and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

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 14, 2016

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Residential Tenancy Branch