



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Norhstar Lyon Holding Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPR MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on November 22, 2019. The landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The landlord attended the hearing and provided testimony. The tenant did not attend the hearing. The landlord testified that he sent the application package, along with his supporting evidence to the tenant on September 19, 2019, by registered mail. I find the tenant is deemed to have received this package on September 24, 2019, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to amend his application to include rent that has accrued since the original application date (for October 2019). I turn to the following Rules of Procedure (4.2):

#### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Further, the Landlord requested to amend his application to withdraw his request for an order of possession. The Landlord testified that the Tenant no longer lives in the unit, and he only requires a monetary order at this point. In consideration of these requests, I hereby amend the agent's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that monthly rent was \$1,300.00 and was due on the first of the month. The Landlord stated that he holds a security deposit, and a pet deposit, totalling \$1,250.00.

The Landlord further explained that the Tenant only paid \$300.00 towards rent for June 2019, and has failed to pay any rent since that time. The Landlord explained that, after not paying rent for several months, the Tenant suddenly vacated the rental unit on October 4, 2019, and left the garage full of discarded belongings. The Landlord explained that he is still trying to fix up the unit and it took him significant time to clear out the garage and get the unit read to re-rent.

The Landlord stated that the Tenant owes \$1,000.00 in rent for June, plus \$1,300.00 for July, August, September, and October, totalling \$6,200.00.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. There is no evidence the Tenant had any right to withhold rent.

With respect to the Landlord's request for a monetary order for unpaid rent, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay \$6,200.00 in rent. This amount is comprised of \$1,000.00 in rent for June, plus \$1,300.00 for July, August, September, and October, totalling \$6,200.00. I find the Tenant is responsible for October 2019 rent, in full, as he left the unit with no notice, and he left behind a significant mess to clean up. I further note the Landlord was unable to re-rent it for that month.

The Landlord requested that they be able to retain the security deposit of \$1,250.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security and pet deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

<u>Claim</u>	<u>Amount</u>
Cumulative unpaid rent	\$6,200.00
Other:	
Filing fee	\$100.00
<b>Less:</b>	
Security/Pet Deposit currently held by Landlord	(\$1,250.00)
<b>TOTAL:</b>	<b>\$5,050.00</b>

### Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,050.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: November 22, 2019

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Residential Tenancy Branch