



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FFL

### Introduction

On November 7, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent and to recover the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

The Tenant testified that she served her documentary evidence to the Landlord on March 12, 2020 using registered mail sent to the address for service of documents provided by the Landlord in the Application. The Tenant testified that the registered mail was never picked up by the Landlord. The Tenant provided the registered mail receipt tracking number as proof of service.

The Landlord testified that he did not receive the registered mail. A party to a proceeding cannot avoid service of documents under the Act. I find that the Tenant served the documents in accordance with sections 89 and 90 of the Act and the Landlord is deemed to have received the documents on March 17, 2020, the fifth day

after they were mailed. The Tenant's documentary is accepted. The Tenant acknowledged receipt of the Landlord's documentary evidence.

### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlords entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on January 1, 2016 and was on a month to month basis. Rent in the amount of \$1,500.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$750.00

The Landlord is seeking monetary compensation as follows:

May 2017 to December 31, 2017 Rent	\$100.00 x 8 months	\$800.00
January 2018 to December 31, 2018 Rent	\$100.00 x 12 months	\$1,200.00
January 2019 to July 31, 2019 Rent	\$100.00 x 7 months	\$700.00
August 2019 Rent		\$1,500.00
September 2019 Rent		\$1,500.00
NSF charges	\$7.50 x 10 months	\$75.00
Propane rental	2017/2018	\$499.99
	total	\$6,274.99

### Unpaid Rent \$2,700.00

The Landlord is seeking to recover unpaid rent over a 27-month period of time. The Landlord testified that the Tenant only paid \$1,400.00 each month for the time period listed above rather than the \$1,500.00 required under the tenancy agreement.

The Landlord stated that the reduction in rent was due to the Tenant having to mow the lawn.

When the Landlord was asked if he had a conversation with the Tenant when the full amount of rent was not paid, he stated that he had a conversation in May 2017 and said ok to the Tenant's request to pay less rent. The Landlord testified that he intended that the reduction in rent would only be for the summer months; however, the Tenant paid less rent for the entire year and afterwards.

The Landlord testified that he attended the rental unit in January 2018 to speak to the Tenant about paying the full rent and left a message with a gentleman who was on the rental property.

The Landlord testified that he never approached the Tenant and raised the issue of paying full rent for the remainder of the tenancy.

In reply, the Tenant testified that the rental property is 48 acres and the Tenant is responsible to mow two acres of grass. The Tenant testified that the tenancy agreement reached with the original owner was that the Landlord provided the mower for the grass. When the original owner sold the property to the current owner the Tenant did not have use of a lawn mower. The Tenant asked the Landlord if she could buy a lawn mower for the rental property and the Landlord responded no and said that he would provide a mower. The Tenant testified that when the Landlord did not provide a mower, the Tenant hired a person to mow the lawn and approached the Landlord to reduce the monthly rent. The Tenant testified that she reached an oral agreement to deduct the cost of having the lawn mowed from the rent.

The Tenant testified that her partner moved onto the rental property in August 2018, so the Landlord did not approach a Tenant in January 2018 about paying more rent. The Tenant testified that at no time did the Landlord approach her and ask her to resume paying the full amount of rent. The Tenant testified that she never heard anything about the rent issue until the Landlord served her with his evidence for this hearing.

#### August 2019 Rent \$1,500.00

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of August 2019. The Landlord is seeking unpaid rent in the amount of \$1,500.00.

In reply, the Tenant testified that the Landlord served her with a Two Month Notice to End Tenancy for Landlord Use of Property dated July 1, 2019 and effective August 31, 2019. The tenant testified that in accordance with the Act, she was entitled to the equivalent of one months rent due under the tenancy agreement. The Tenant did not pay rent for August 2019 because she was entitled to a free month of rent. The Tenant provided a copy of the Two Month Notice to End Tenancy for Landlord Use of Property dated July 1, 2019.

The Landlord provided testimony confirming that he issued the Tenant a Two Month Notice to End Tenancy for Landlord Use of Property dated July 1, 2019.

September 2019 Rent \$ 1,500.00

The Landlord testified that the Tenant vacated the rental unit on September 13, 2019. The Landlord testified that the Tenant failed to pay rent owing under the tenancy agreement for the month of September 2019. The Landlord stated that the Landlord should be entitled to recover rent for the entire month of September 2019. The Landlord confirmed that he did not re-rent the unit to a new tenant and did not suffer a loss of rent for the remainder of September 2019. The Landlord ended the tenancy to use the unit for his family.

In reply, the Tenant testified that she had moved out of the rental unit in mid-August 2019; however, her partner's truck broke down at the end of August and he needed to stay in the unit into September 2019. The Tenant testified that her partner reached a verbal agreement with the Landlord on September 10, 2019 that the Landlord could keep the remaining propane in the tank, and other items such as a saw, and a shop vac with a value of \$600.00, in exchange for not having to pay any September 2019 rent. The Tenant referenced her documentary evidence that she provided in support her testimony on the issue. The Tenant provided notes that indicate that the Landlord was told that he could keep the propane and the tank in exchange for rent from September 1 -12 2019 and the Landlord agreed that this was acceptable.

NSF Charges \$75.00

The Landlord testified that the Tenant bounced rent cheques on ten occasions. The Landlord testified that he did not provide any documentary evidence such as banking records or returned cheques in support of his claim.

In reply, the Tenant testified that there was only one occasion on July 2019 where a rent cheque was returned for non-sufficient funds. The Tenant testified that the Landlord never raised an issue with her about any NSF charge.

Propane Tank Rental \$499.99

The Landlord testified that the Tenant did not pay for the propane tank rental on the property for 2017 and 2018. The Landlord is seeking compensation of \$499.99.

The Tenant testified that the issue of the propane tank rental was considered at a previous dispute resolution hearing. The Tenant provided a copy of a Decision dated

October 24, 2019 where an Arbitrator found that the Landlord is responsible for propane tank rental costs.

### Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that 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 for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.*

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

### Unpaid Rent \$2,700.00

Section 14(2) of the Act provides a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

I find that the Landlord and Tenant agreed to a reduction of monthly rent in the amount of \$100.00 each month rather than the Landlord providing a lawn mower to the Tenant as required under the original tenancy agreement. I find that the agreement that was reached could only be changed if the parties agreed to amend the agreement. I find that the Landlord did not approach the Tenant or send any documentation to the Tenant during the tenancy requesting to change the agreement. The Landlord's claim to recover \$100.00 for 27 months fails and is dismissed without leave to reapply.

August 2019 Rent \$1,500.00

I find that the Landlord served a Two Month Notice to End Tenancy for Landlords Use of Property to the Tenants with an effective date of August 31, 2019. In accordance with section 51 of the Act the Tenant is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement and a tenant may withhold the amount authorized from the last month's rent.

I find that the Tenant was not required to pay the Landlord rent for August 2019.

The Landlords claim to recover \$1500.00 for August 2019 rent is dismissed without leave to reapply.

September 2019 Rent \$ 1,500.00

I find that the Tenants were required to vacate the rental unit on August 31, 2019 and overheld the unit for 12 days. I find that the Tenants are obligated to compensate the Landlord for the 12 days of November 2019. I find that the Landlord is not entitled to recover the full amount of rent for November 2019 because they ended the tenancy for Landlord use of property and were not re-renting the unit. The Landlord did not suffer a loss of rent for the remainder of November 2019.

With respect to compensation; I find that 12 days of prorated rent amounts to \$580.56. The Tenant submitted that the parties reached an agreement / exchange in lieu of rent. The Landlord did not provide any testimony in response to the Tenant's testimony that the parties reached an agreement on September 10, 2019 where the Landlord accepted items worth \$600.00 in exchange for waiving September rent.

I find that the Tenant provided the stronger evidence on this issue. I find that the Landlord accepted items in lieu of September 2019 rent. The Landlords claim is dismissed without leave to reapply.

NSF Charges \$75.00

Section 7(1) of the Tenancy Regulation provides that a Landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution.

The Landlord did not provide any documentary evidence to support the claim for ten NSF charges. The Tenant acknowledged that there was one returned rent cheque. I find that there was one returned rent cheque. I find it reasonable to award the Landlord \$15.00 for the charges related to a returned rent cheque.

#### Propane Tank Rental \$499.99

I have reviewed the Tenant's evidence and I find that the issue of the propane tank rental was considered at an earlier hearing and an Arbitrator found that the Landlord is responsible for the tank rental costs.

I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of Res Judicata. Res judicata is a rule in law that a final decision, determined by an officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

I find that the Landlord's application regarding the propane tank rental was decided in an earlier hearing. The Landlords claim is dismissed without leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The majority of the Landlords claim was dismissed. Therefore, I decline an order for the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$15.00 for a returned cheque charge. I find that the Landlord is entitled to a monetary order in the amount of \$15.00. This monetary 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 majority of the Landlords claims for unpaid rent; nsf fees; and the rental cost of a propane tank are dismissed.

The Landlord has established a monetary award in the amount of \$15.00. I grant the Landlord a monetary order in the amount of \$15.00.

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: March 25, 2020

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Residential Tenancy Branch