



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”) on September 29, 2020, for an order of possession, for a monetary order for unpaid rent, and to recover the cost of the filing fee.

The landlord filed a second Application for Dispute Resolution on October 19, 2020 for a subsequent order of possession related to a second notice to end tenancy.

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

As the tenants 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 respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on October 23, 2020, which were successfully delivered on October 26, 2020. I find that the tenants have been duly served in accordance with the Act.

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.

### Preliminary matters

At the outset of the hearing the landlord's agent requested to amend their application to include subsequent unpaid rent for October, and November 2020. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include subsequent unpaid rent.

At the outset of the hearing the landlord's agent stated that on November 13, 2020, they discovered that the tenants had vacated the premise. The agent stated that they no longer require an order of possession.

### Issue to be Decided

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

### Background and Evidence

The tenancy began on July 1, 2020. Rent in the amount of \$1,975.00 was payable on the first of each month. The tenants paid a security deposit of \$955.00 and a pet damage deposit of \$200.00. The tenancy ended on November 13, 2020.

The landlord's agent testified that the tenants rent cheques for August and September 2020, were returned due to insufficient funds. The landlord stated that on September 8, 2020, they received a portion of the unpaid rent in the amount of \$2,025.00 leaving a balance due of rent arrears in the amount of \$1,925.00.

The landlord's agent testified that the tenants did not pay rent for October and November 2020 for a total amount of \$3,950.00. The landlord seek to recover unpaid rent in the total amount of \$5,875.00.

The landlord's agent seeks that they security deposit and pet damage deposit be offset with the amount of unpaid rent owed.

### 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.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

***26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

I accept the undisputed testimony of the landlord's agent as stated above that the tenants have failed to pay all rent owed in accordance with the tenancy agreement. I find the tenants have breached section 26 of the Act and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the total amount of **\$5,875.00**.

I find that the landlord has established a total monetary claim of **\$5,975.00**, 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 **\$955.00** and pet damage deposit of \$200.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,820.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage 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*.

Date: January 8, 2020

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Residential Tenancy Branch