

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

**Dispute Codes:** OPR, MNR, MNSD, MNDC, FF.

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- An order of possession, pursuant to Section 55;
- A monetary order for unpaid rent and loss of income, pursuant to Section 67;
- An order in the amount of the security deposit that the tenant failed to pay when the cheque was returned for insufficient funds, pursuant to Section 38;
- An order to recover the filing fee pursuant to Section 72.

The notice of hearing dated February 02, 2009 was served on the tenant on February 03, 2009, by registered mail. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

At the start of the hearing, the landlord advised me that the tenant had moved out of the rental unit, on February 07, 2009 and hence an order of possession was no longer required.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover unpaid rent, loss of income, the security deposit, mailing costs and the filing fee?

### **Background and Evidence**

The landlord testified that the tenancy started on January 10, 2009. The monthly rent is \$1250.00 due in advance on the tenth day of the month. At the start of the tenancy, the tenant gave the landlord a cheque in the amount of \$1875.00 which consisted of the security deposit (\$625) and rent for January 10 to February 10, 2009 (\$1250.00). This cheque was returned to the landlord for insufficient funds.

On January 19, 2009, the landlord advised the tenant about the returned cheque, by email and requested immediate payment. On January 22, 2009, the landlord served the tenant with a ten day notice to end tenancy effective February 01, 2009 and applied for dispute resolution on February 02, 2009. The tenant moved out on February 07, 2009 without paying rent or cleaning the rental unit. The landlord is claiming rent for the period of January 10 to February 10, 2009 and loss of income for the period of February 11 to March 01, 2009. The landlord stated that the refrigerator was stained and had to be replaced and the landlord spent several hours cleaning the unit. The landlord has not submitted a claim for cleaning or replacing the appliance, but has claimed the security deposit of \$625.00. The landlord has also applied to claim expenses for gasoline (\$100.00), registered mail (\$22.57) and the filing fee (\$50.00).

### **Analysis**

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim for rent (\$1250.00 for January 10 – February 10) and loss of income (\$803.57 for February 11- March 01). Accordingly, the landlord has established an entitlement for \$2053.57 for the above mentioned claims.

Section 20 of the *Residential Tenancy Act*, states that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement. The parties entered into an agreement on January 10, 2009 and the tenant moved out on February 07, 2009. Hence, the landlord's claim for the security deposit is dismissed.

The landlord has not submitted any evidence to support the landlord's claim of \$100.00 for gasoline. Therefore, this portion of the landlord's claim is dismissed. The landlord had claimed utilities in the written application, but stated that the landlord did not incur any costs for utilities as the account was in the name of the tenant. Hence the landlord withdrew the landlord's claim for utilities.

Section 72 of the *Act* addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the landlord is entitled to the filing fee and the landlord's claim for mailing costs is dismissed.

I find that the landlord is entitled to \$2103.57 for unpaid rent, loss of income and the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the landlord a monetary order in the amount of **\$2103.57**

Dated March 16, 2009.

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Dispute Resolution Officer