



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR MNR MNSD FF

Introduction

This hearing was convened in response to an application by the landlord for an Order of possession for unpaid rent, a monetary order for unpaid rent of \$425, and to retain the security deposit in partial satisfaction for the unpaid rent, as well as to recover the filing fee associated with this application.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by personal service in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

The landlord advised at the outset of the hearing that the tenant vacated the rental unit on December 22, 2009 and that the landlord has, subsequent to filing for dispute resolution, been compensated for the outstanding rent of \$425.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenant vacated the rental unit on December 22, 2009. The landlord has submitted evidence that the tenant assigned their security deposit to the landlord on December 23 in writing, and the landlord subsequently received the balance of the rent for the last month. For the purposes of this claim, the landlord advised this hearing that in respect

to their monetary claim the landlord has been made whole. The landlord seeks return of the filing fee in the amount of \$50.

Analysis

Section 38 of the Residential Tenancy Act (the Act), in part states as follows **(emphasis for ease)**;

Return of security deposit and pet damage deposit

38 (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) **at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or**

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Based on the landlord's own testimony I find that the tenant has satisfied the landlord's monetary claim on application of \$425. As a result, I decline to grant the landlord recovery of the filing fee.

Conclusion

The landlord's application is hereby dismissed without leave to reapply.

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*.
