



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR MND MNR MNSD MNDC FF

### Preliminary Issues

The Landlord testified that he regained possession of the unit as of February 10, 2011 and is therefore withdrawing his request for an Order of Possession. He confirmed that he has not determined if there were damages as of yet and is therefore withdrawing his requests for a Monetary Order for damage to the unit site or property and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally on February 12, 2011, in the presence of a witness.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite him being served notice of this hearing in accordance with the *Act*.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

The parties entered into a month to month written tenancy agreement effective November 1, 2010. Rent was payable on the first of each month in the amount of \$1,000.00 and the Tenant paid \$500.00 as a security deposit on November 1, 2010.

The Landlord advised a 10 Day Notice to End Tenancy was issued and served personally to the Tenant on January 22, 2011 for the accumulated outstanding rent of \$1,450.00 which was comprised of rent owing from December 2010 and January 2011. The Tenant failed to pay rent for February 2011 and has made another payment of \$200.00 on February 10, 2011. The Landlord is seeking a monetary order for the current outstanding balance of \$2,140.00 (\$140 for December 2010, \$1,000.00 for January 2011, and \$1,000.00 for February 2011).

### Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant Landlord pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenant.

The Landlord claims for unpaid rent of \$2,140.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. After reviewing the evidence I find the Landlord has proven his claim for loss, as listed above, in the amount of **\$2,140.00** (\$140 for December 2010, \$1,000.00 for January 2011, and \$1,000.00 for February 2011).

The Landlord has succeeded with his claim; therefore I hereby award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and the Landlord's claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Accumulated Unpaid Rent	\$2,140.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$2,190.00</b>
Less Security Deposit of \$500.00 plus interest of \$0.00	-500.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,690.00</b>

### Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,690.00**. The order must be served on the Respondent Tenant and is enforceable through the Provincial Court 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: February 23, 2011.

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Residential Tenancy Branch