



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

OPR, MNR, MNDC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated July 7, 2012 and a monetary order for rent and late fees owed.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on July 21, 2012, the tenant did not appear.

The landlord stated that they are no longer seeking an Order of Possession as the tenant vacated the unit on August 1, 2012. The landlord still seeks a monetary order.

### **Issue(s) to be Decided**

The remaining issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation.

### **Background and Evidence**

The landlord testified that the tenancy began on August 1, 2011, at which time the tenant paid a security deposit of \$375.00. The landlord testified that the rent was \$750.00 per month and the tenant fell into arrears accruing a debt of \$2,185.00 by July 2012, including the \$20.00 late fee for July 2012. The landlord pointed out that a term in the tenancy agreement provided that late fees of \$20.00 would be imposed for late payments.

The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on July 7, 2012. The landlord submitted into evidence a copy of the Notice to End Tenancy, a copy of the tenant's ledger, a copy of the tenancy agreement and proof of service. The landlord testified that the tenant did not pay the arrears before leaving on August 1, 2012. The landlord is also seeking loss of rent for the month of August in the amount of \$750.00 and a \$20.00 late fee for August, \$750.00 rent for September 2012 and a \$20.00 late fee for September.

## **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant has not paid the outstanding rent and did not apply to dispute the Notice.

I find that the landlord has established a total monetary claim for rent owed in the amount of \$2,235.00 comprised of accrued rental arrears and late fees of \$2,185.00 and the \$50.00 cost of the application.

With respect to the loss of rent for the month of August 2012, I find that an applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord.

I find that under section 7(2) of the Act, the claimant must prove that reasonable measures to re-rent the unit to mitigate the loss for the month of August were taken. In this regard, I find that the landlord did not provide evidentiary proof that attempts were ever made to re-rent the unit to date. Accordingly, I find that the claim for loss of rent must be dismissed.

I find that the landlord is entitled to total monetary compensation for \$2,235.00. I order that the landlord retain the security deposit of \$375.00 in partial satisfaction of the claim leaving a balance due of \$1,860.00.

**Conclusion**

I hereby grant the Landlord an order under section 67 for \$1,860.00 This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced 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: August 13, 2012.

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Residential Tenancy Branch