



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, and to recover the filing fee.

The landlord attended the teleconference hearing. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and the Application for Dispute Resolution (the "Application") was considered. The landlord testified that the Notice of Hearing, Application and evidence was served on the tenant by registered mail on February 28, 2014. The landlord stated that the registered mail package was addressed to the tenant and addressed to the address of the rental unit and that the tenant was residing at the rental unit at the time the registered mail package was mailed. The landlord provided a registered mail tracking number during the hearing. The landlord stated that the Canada Post tracking website showed that the tenant did not accept the registered mail package. Documents served by registered mail are deemed served five days later under section 90 of the *Act*. Therefore, I find the tenant was deemed served with the Notice of Hearing, Application and documentary evidence as of March 5, 2014. I note that refusal or neglect to accept service of registered mail does not constitute grounds for a Review.

### Preliminary and Procedural Matters

At the outset of the hearing, the landlord clarified that although he applied under the *Manufactured Home Park Tenancy Act*, he actually intended to apply under the

*Residential Tenancy Act*. As a result, and pursuant to section 64 of the *Act*, I amend the landlord's application to reflect an application under the *Residential Tenancy Act* as I find the intent of the landlord's application to be clear.

In addition to the above, the landlord testified that the tenant abandoned the rental unit on March 18, 2014, since filing his application. As a result, the landlord requested to withdraw his request for an order of possession as the tenant had already returned possession of the rental unit by abandoning the rental unit. The landlord is permitted to withdraw that portion of his request as I find that such a request does not prejudice the tenant. Given the above, I will not consider the landlord's request for an order of possession.

The landlord also requested to reduce his monetary claim from \$1,074.54 as indicated in his application to \$716.36, which is comprised of unpaid rent in the amount of \$358.18 for February 2014 and unpaid rent of \$358.18 for March 2014. I find that a reduction in the landlord's monetary claim does not prejudice the tenant. As a result, I permit the landlord to reduce his monetary claim against the tenant during the hearing.

#### Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

#### Background and Evidence

The landlord testified that a month to month tenancy agreement began on or about November of 2011 and ended when the tenant abandoned the rental unit on March 18, 2014. Monthly rent of \$358.18 was due on the first day of each month. The landlord stated that the tenant did not pay a security deposit.

The landlord stated that he served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated February 2, 2014 on the tenant by posting to the tenant's door on February 2, 2014. The amount owing listed on the 10 Day Notice was \$358.18 due February 1, 2014, and the stated effective vacancy date was listed as February 12, 2014.

The landlord testified that the tenant did not dispute the 10 Day Notice either and did not pay February 2014 rent or March 2014 rent. The landlord testified that the tenant did not abandon the rental unit until March 18, 2014. The landlord stated that the tenant has not provided his written forwarding address.

### Analysis

Based on the documentary evidence and the landlord's undisputed testimony, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Monetary claim of landlord** – I accept the landlord's undisputed testimony that the tenant failed to pay rent for the months of February 2014 and March 2014 and owes \$358.18 for each of those months, for a total of \$716.36. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, **I find** the tenant breached section 26 of the *Act* by failing to pay rent for the months of February 2014 and March 2014. Therefore, **I find** the landlord has met the burden of proof and has established a monetary claim of \$716.36 comprised of \$358.18 owing for February 2014 rent, and \$358.18 owing for March 2014 rent.

As the landlord's application had merit, **I grant** the landlord the recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the landlord has established a total monetary claim of **\$766.36** comprised of \$716.36 in unpaid rent, plus the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$766.36**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord has established a total monetary claim of \$766.36 as indicated above. The landlord has been granted a monetary order under section 67 of the *Act* in the amount of \$766.36. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 17, 2014

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Residential Tenancy Branch

