



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPR, MNR, MNSD, FF

For the tenant - CNR

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order to keep all or part of the security deposit and to recover the filing fee from the tenant for the cost of this application. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent.

At the outset of the hearing the landlord's agent advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

The hearing went ahead as scheduled however the tenant failed to dial into the hearing during the conference call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application and the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served in person to the tenant at 4.10 p.m. on February 11, 2015 with a witness present.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to an Order to keep the security deposit?

Background and Evidence

The landlord's agent testified that this tenancy started on November 01, 2014 for a fixed term tenancy due to expire on November 01, 2015. Rent for this unit was \$850.00 per month due on the first of each month. The tenant paid a security deposit of \$425.00 on October 24, 2014.

The landlord's agent testified that the tenant failed to pay all the rent for February, 2015 leaving an unpaid balance of \$747.00. The landlord attempted to work with the tenant and draw up a new tenancy agreement changing the due date of the rent and providing a repayment method for the tenant to pay the rent arrears; however, this new agreement was not signed by the tenant. The tenant was served a 10 Day Notice to End Tenancy on February 02, 2015. This Notice indicated that rent of \$747.00 is outstanding and the tenant had five days to either pay the outstanding rent or file an application to cancel the Notice or the tenancy would end on February 12, 2014.

The landlord's agent testified that the tenant failed to pay the outstanding rent and the tenant's application was filed on February 16, 2015. The landlord's agent testified that the tenant moved from the rental unit on February 26, 2015. The unit has not been re-rented and the landlord seeks to recover a loss of rent for March, 2015 of \$850.00.

The landlord seeks an Order to keep the security deposit to offset against the unpaid rent and to recover the filing fee of \$50.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently I find that the tenant has failed to pay rent for February, 2015 to the amount of **\$747.00**. The landlord is entitled to recover these rent arrears.

With regard to the landlord's claim to recover a loss of rent for March, 2015; the tenant vacated the rental unit on February 26, 2015. This was a fixed term tenancy that was not due to end until November 01, 2015. I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that a landlord is entitled to a loss of rent up to the time the tenancy could be legally ended. The landlord also has a statutory duty to mitigate any loss by making reasonable attempts to re-rent the unit. The landlord's agent testified that the landlord is out of the country until April; however, this does not release the landlord from their statutory duty to re-rent the unit as quickly as possible. As the hearing took place on March 09, 2015 there is still opportunity for the landlord to get the unit re-rented for part way through March. I therefore must limit the landlord's claim to recover unpaid rent for March up to March 15, 2015 to the amount of **\$425.00**. If the landlord can show that steps were taken to re-rent the unit through March and these steps were unsuccessful then the landlord is at liberty to file a new application to recover a further loss of rental income.

As the landlord's claim has some merit, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. I further Order the landlord to keep the tenant's security deposit of **\$425.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for February	\$747.00
Loss of rent for March	\$425.00
Filing fee	\$50.00
Less security deposit	(-\$425.00)
Total amount due to the landlord	\$797.00

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$797.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent and is enforceable through the Provincial Court as an Order of that Court.

The tenant's application is dismissed without leave to reapply.

As the applicant did not appear at the hearing today; I Order that the applicant pay the filing fee of **\$50.00** that was previously waived to the director of the Residential Tenancy Office.

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: March 09, 2015

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Residential Tenancy Branch

