



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      OPR, MNR, MNDC, FF, CNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant also made an application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave testimony. The tenant confirmed receipt of the landlord's Notice of Hearing Package and the landlord's submitted documentary evidence in person on March 5, 2015. The landlord has confirmed receipt of the tenant's Notice of Hearing Package in person on March 4, 2015. Based upon the undisputed testimony of both parties, I find that both parties have been properly served under section 89 of the Act with the Notice of Hearing Packages of the other party.

The tenant stated that he did not serve the landlord with his faxed one page evidence, which is a copy of a text message exchange between the tenant and the previous landlord. The landlord confirmed that he has not received any documentary evidence from the tenant. It was pointed out to the tenant that under General Information No. 1,

Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing...

The tenant confirmed that he read and understood the Notice of Hearing letter and its contents.

Residential Tenancy Branch Rules of Procedure, Rule No. 3 states that evidence must be served to the other party as soon as reasonably possible. Standards for the service of documents to be referred to in a dispute resolution hearing are essential to a fair hearing. Service within a reasonable time of making an application allows the respondent an opportunity to know the nature of the application and have an opportunity to respond. The landlord stated that he did not receive any documentary evidence from the tenant. The tenant confirmed in his direct testimony that he did not provide a copy of his one page evidence to the landlord.

I find that the tenant has failed to comply with section 88 of the Act by serving the landlord with a copy of his evidence and that the tenant's documentary evidence cannot be considered in this hearing and is excluded.

At the outset, both parties confirmed that the tenant has vacated the rental unit on March 31, 2015 and that the landlord now has possession of the rental unit. Both parties have withdrawn their applications for possession of the rental unit. No further action is required for possession of the rental unit. As such, the hearing shall proceed on the landlord's request for a monetary order for unpaid rent.

During the hearing the landlord also clarified that as the tenant had vacated the rental unit on March 31, 2015 that his request for loss of rental income is no longer required and is amending the monetary claim by lowering to \$900.00 from the \$1,800.00 applied for. The landlord's monetary claim is now for \$900.00 for unpaid rent. The tenant stated his understanding and did not object to the lowering of the claim.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and/or for money owed or compensation or damage or loss?

Is the landlord entitled to recovery of his filing fee?

#### Background and Evidence

This tenancy began on January 31, 2015 on a fixed term tenancy of 4 months ending on May 30, 2015 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement dated February 4, 2015. The monthly rent was \$900.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$450.00 was paid.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated March 3, 2015 by posting it to the rental unit door. Both parties confirmed that the 10 Day Notice stated that the tenant failed to pay rent of \$900.00 that was due on March 1, 2015 and displayed an effective end of tenancy date of March 14, 2015.

The landlord stated that as of the date of this hearing the tenant has failed to pay March rent of \$900.00 and seeks a monetary order for \$900.00 for the unpaid rent and recovery of the \$50.00 filing fee.

The tenant disputed the landlord's claim that rent was unpaid for March 1, 2015. The tenant stated that the previous landlord had collected the last months rent of \$900.00 in advance and a \$450.00 security deposit. The tenant stated he had written proof in the excluded one page evidence.

The landlord disputed the tenant's claim stating that he did not receive any rent from the previous landlord for March 2015.

The tenant stated that he had a witness, his girlfriend, P.C., who was present at the end of the tenancy when the previous landlord verbally told the new landlord that a months rent was given to the new landlord. The witness, P.C. gave direct testimony that she was present when the previous landlord gave verbal acknowledgment in her presence along with the tenant and the new landlord that one months rent was given to the new landlord.

The landlord disputed the witness's statement.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant failed to pay rent after being served with the 10 Day Notice dated March 3, 2015.

The landlord claimed that the tenant failed to pay the monthly rent of \$900.00. Both parties confirmed that the landlord had served the tenant with the 10 Day Notice dated March 3, 2015. The tenant stated that the last months rent was paid to the previous landlord and relies on his witness, P.C. who stated that she was present when the prior landlord verbally confirmed that a months rent was given to the new landlord by the previous landlord. The landlord disputed this claim stating that he was not present at the time and that no rent was received from the previous landlord.

I find on a balance of probabilities that the landlord has established a claim for unpaid rent of \$900.00. The tenant has confirmed in his direct testimony that he did not give any rent to the landlord, but relies on a witness statement that rent was paid to the landlord by the previous landlord. The tenant has failed to provide sufficient evidence to satisfy me that rent was paid. The landlord has established a claim for unpaid rent of \$900.00.

The landlord is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

The landlord is granted a monetary order under section 67 for the balance due of \$950.00 for the \$900.00 monetary claim and recovery of the \$50.00 filing fee.

The landlord is provided with this order in the above terms and the landlord should serve the tenant with this order so that it may enforce it in the event that the tenant does not pay the outstanding rent as set out in their agreement. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: April 08, 2015

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Residential Tenancy Branch

