



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

### **DECISION**

Dispute Codes                      OPR, MNR, MNDC, FF

#### 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; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1121 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she personally served the tenant with the dispute resolution package on or about 19 July 2015. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that she did not serve the evidence to the tenant that was provided to this Branch on or about 5 August 2015 (the August Evidence). The Residential Tenancy Branch Rules of Procedure requires that an applicant serve all other parties with the evidence on which that applicant intends to rely. As the tenant was not served with the August Evidence, it is excluded and I will not consider it.

### Preliminary Issue – Landlord's Amendments

The landlord requested several amendments to her application at the hearing. Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

At the hearing the landlord testified that the tenant vacated the rental unit in or about the second week of August. The landlord asked to amend her application to withdraw the request for an order of possession. As there is no prejudice to the tenant in permitting this amendment, it is allowed.

The landlord asked to amend her application to include August's rent. As the tenant reasonably ought to have known that these amounts were owed if he remained occupying the rental unit, I have allowed the amendment as there is no undue prejudice to the tenant.

The landlord incorrectly set out in her application that she sought a total monetary order in the amount of \$1,712.50. Her application and monetary order worksheet detail that she seeks:

- rent for May, June and July;
- payment of a damage deposit in the amount of \$237.50;
- a hydro reconnection fee of \$125.00; and
- replacement of a lock in the amount of \$40.30.

These amounts total to \$1,827.80. The landlord testified that this is a math error on her part. The landlord asked to amend her application to include the correct amount. As the details of the dispute are pleaded in such a way that the math error is obvious, I allowed the amendment as there is no undue prejudice to the tenant.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are below.

This landlord testified that she believes that the tenancy began in February 2015. The tenancy ended on or about the second week of August 2015. There is no written tenancy agreement with respect to this tenancy. Monthly rent was \$475.00 and was due on the first. The landlord testified that she does not hold a security deposit.

On 15 June 2015 the landlord personally served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice). The 10 Day Notice was dated 15 June 2015 and set out

an effective date of 25 June 2015. The 10 Day Notice set out that the tenant had failed to pay rent of \$950.00 for both May and June. The 10 Day Notice also included a demand for payment of a security deposit in the amount of \$237.50.

The landlord testified that she made several attempts to collect rent. The landlord provided me voided receipts for June and July. The landlord would prepare receipts in advance of going to the residential property to collect rent. The landlord testified that when the tenant would not provide payment she would void the prepared receipt.

The landlord testified that the tenant had terminated hydro service to the rental unit on 17 June 2015 and that hydro service had been cut on 3 or 4 August 2015.

The landlord provided a receipt from a home hardware store dated 15 July 2015 in the amount of \$40.30.

The landlord claims for \$2,302.80:

Item	Amount
Unpaid May Rent	\$475.00
Unpaid June Rent	475.00
Unpaid July Rent	475.00
Unpaid August Rent	475.00
Lock	40.30
Damage Deposit	237.50
Hydro Reconnection	125.00
<b>Total Monetary Order Sought</b>	<b>\$2,302.80</b>

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

On the basis of the sworn and uncontested testimony of the landlord, I find that the terms of the tenancy required payment of rent in the amount of \$475.00 on the first of every month.

I was not provided any evidence that indicates that the tenant was entitled to deduct any amount from rent. Accordingly, the landlord was entitled to rent of \$475.00 for each of May and June: \$950.00.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

Pursuant to subsection 57(3) a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. As the tenancy ended 25 June 2015, the landlord is not entitled to "rent" as such; however, the landlord is entitled to compensation from the tenant for his use and occupancy of the rental unit. Further, pursuant to section 67 a landlord is entitled to be compensated for his or her rental loss. A claim for loss is subject to a duty of mitigation pursuant to section 7(2).

The landlord testified that the tenant did not vacate the rental unit until the second week of August. I find that the landlord has shown an entitlement to compensation for the tenant's use and occupancy of the rental unit for the period 1 July 2015 to 15 August 2015. I find that the landlord is entitled to a rental loss for the remainder of August as the overholding tenant caused the landlord to be unable to rerent the unit. The uncertainty regarding the end of tenancy prevented the landlord from rerenting the rental unit. I find that the landlord has shown a total entitlement pursuant to sections 57 and 67 in the amount of \$950.00.

Section 25 of the Act places the responsibility for changing the locks at the beginning of a new tenancy on the landlord. The landlord has not provided any reason why this responsibility should shift to the tenant in this case. Thus, the landlord's claim for the cost associated with rekeying the suite is denied.

The landlord seeks payment of the balance of the tenant's security deposit. As the tenancy is ending, I decline to order that any security deposit be paid from the tenant to the landlord.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord seeks the cost of the hydro reconnection fee in the amount of \$125.00. In this case, the landlord has not provided any proof of the cost of reconnection from hydro. By failing to provide this evidence, the landlord has failed to substantiate her claim in the amount of \$125.00 as required by section 67 of the Act. As such, the landlord is not entitled to recover this amount.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,950.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid May Rent	\$475.00
Unpaid June Rent	475.00
Unpaid July Compensation	475.00
Unpaid August Compensation	475.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,950.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 subsection 9.1(1) of the Act.

Dated: September 23, 2015

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Residential Tenancy Branch