



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB, MNR, MND, MNDC, MNSD, FF

### Introduction

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

- an order of possession for cause and for breach of an agreement with the landlord, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord's agent, NK ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on February 18, 2016, by way of registered mail to the rental unit where the tenant was still residing. The landlord provided a Canada Post receipt and tracking number with his Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on February 23, 2016, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to reduce the monetary order sought from \$562.00 to \$450.00. I find no prejudice to the tenant in doing so, as it is a reduction rather than an increase in the landlord's monetary claim.

At the outset of the hearing, the landlord confirmed that the tenant had already vacated the rental unit and he no longer required an order of possession. Accordingly, these portions of the landlord's Application are dismissed without leave to reapply.

The landlord confirmed that he wished to withdraw his claim for a monetary order for damage to the rental unit. He said that he made the claim prematurely as the tenant had not yet vacated the unit and he was not aware of the full extent of the damage in the unit at the time of his Application. Accordingly, I allowed the landlord to withdraw this portion of his Application, as I see no prejudice to the tenant in doing so, since the tenant did not appear at this hearing to respond to the landlord's claim.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on December 11, 2014 and ended on April 1, 2016. He said that monthly rent in the amount of \$450.00 is payable on the first day of each month. The landlord said that a security deposit of \$225.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord provided a copy of the written tenancy agreement.

The landlord seeks a monetary order of \$450.00 for March 2016 rent. The landlord said that the tenant failed to pay rent for March 2016, while living in the rental unit, as the tenant did not vacate until April 1, 2016. The landlord also seeks to recover the \$100.00 filing fee for this Application from the tenant.

### Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant failed to pay rent of \$450.00 that was due on March 1, 2016, while living in the rental unit. I find that the tenant was required to pay this rent under the tenancy agreement. Therefore, the landlord is entitled to a monetary order of \$450.00 for rental arrears for March 2016.

As the landlord was successful in this Application, I find that he is entitled to recover the \$100.00 filing fee paid for the Application.

The landlord continues to hold the tenant's security deposit of \$225.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$225.00 in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$325.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The landlord's Application for a monetary order for damage to the rental unit is withdrawn. The landlord's Application for an order of possession for cause and for breach of an agreement is dismissed without leave to reapply.

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 05, 2016

---

Residential Tenancy Branch