



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing addressed 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, money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement, pursuant to section 67;
- a monetary order to keep all or part of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's agent (the "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 confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package on June 23, 2016, at the rental unit where the tenant is residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on June 23, 2016, the day it was served.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

Is the landlord entitled to a monetary order to keep all or part of the security deposit?

Is the landlord authorized to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified that this tenancy began on August 1, 2010 on a fixed term until July 31, 2011 at which time the tenancy continued on a month-to-month basis. Monthly rent in the current amount of \$900.00 is payable on the first day each month. The landlord provided copies of legal Notice of Rent Increases for each year of tenancy. The rent has increased from the original tenancy agreement amount of \$825.00 to \$860.48, effective June 1, 2012, from \$860.48 to \$875.00, effective November 1, 2013 and from \$875.00 to the current amount of \$900.00, effective May 1, 2016. The tenant remitted \$412.50 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

A 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") of \$2,500.00 due on June 1, 2016 was issued to the tenant on June 6, 2016 by way of posting to the rental unit door where the tenant resides. The notice indicates an effective move-out-date of June 16, 2016. The landlord provided a signed, witness proof of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on June 9, 2016, three days after its posting.

The landlord seeks a monetary order of \$3,575.00 for unpaid rent from April 2016 to July 2016. The landlord claimed that the tenant paid a total of \$200.00 in rent for the above four months. The landlord also seeks a monetary order for the loss of August rent in the amount of \$900.00.

The landlord is also seeking \$25.00 for each month of late fees from April 2016 to August 2016 in the total amount of \$125.00.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

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.

I find that the landlord proved that the current rent for this unit is \$900.00 and previous rent for this unit was \$875.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from April 2016 to July 2016. I also find that the tenant should reasonably have known that the landlord would suffer the loss of August rent in the amount of \$900.00 if he did not vacate the rental unit to allow the landlord to prepare the unit for re-rental. Therefore, I find that the landlord is entitled to \$4,475.00 less the \$200.00 payment for a total of \$4,275.00 in rent.

Section 7 of the *Regulation* establishes that a landlord may charge an administration fee of \$25.00 of late payment of rent if the tenancy agreement provides for that fee. Based on the tenancy agreement before me, there is no clause that provides for a late fee. Accordingly, I dismiss the landlord's monetary claim in respect to late fees.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$412.50 in partial satisfaction of the monetary award and I grant an order for the balance due \$3,862.50. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$3,962.50.

### Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I dismiss the landlord's application for a monetary order for late fees without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$3,962.50 against the tenant.

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: July 29, 2016

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Residential Tenancy Branch