



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR, MNR, MNSD, 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 pursuant to section 67;
- authorization to retain all or a portion of 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 from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 25 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 she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The tenant vacated the rental unit on April 15, 2016. Consequently, the landlord is no longer seeking an order of possession and this portion of the landlord's application is dismissed without leave to reapply.

The landlord testified that on May 2, 2016 she forwarded the landlord's application for dispute resolution hearing package ("Application") via registered mail to the tenant's forwarding address. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application on May 7, 2016, the fifth day after its registered mailing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

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

### Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on August 1, 2015 on a fixed term basis until July 31, 2016. Rent in the amount of \$1,000.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$500.00 at the start of the tenancy.

The landlord seeks a monetary order of \$1,000.00 for unpaid rent for April 2016 and \$3,000.00 for loss of rent from May to July 2016. The landlord also seeks a one-time late fee in the amount of \$25.00. The landlord claimed that the rental unit, located in Kitimat British Columbia, remains vacate despite advertisements on the internet and local newspapers. The landlord testified that out of 199 rental units she currently has 67 vacancies.

The landlord testified she was seeking \$290.00 in damages, specifically \$75.00 to cover three hours of cleaning, \$65.00 for carpet cleaning and \$150.00 for key replacement costs.

The landlord is also seeking 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*, *Residential Tenancy Regulation* (the "*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 \$1,000.00. I find the landlord provided undisputed evidence that the tenant failed to pay rent for April 2016.

Therefore, I find that the landlord is entitled to \$1,000.00 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 a late fee.

The landlord claimed damages for loss of rent from May to July 2016. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if she abandoned the rental unit prior to the end of the fixed term tenancy. Although the landlord has been unsuccessful in re-renting the unit, I find the landlord has proven she has mitigated her loss by advertising in both the local newspapers and internet. Based on this undisputed evidence I find that the landlord is entitled to recover the loss of rent from May to July 2016, in the amount of \$3,000.00

Although the landlord testified to costs incurred for general cleaning, carpet cleaning and key replacement, she has not provided documentary evidence in the form of receipts to substantiate

these costs. For this reason I dismiss this portion of the landlord's application for damages with leave to reapply. Therefore, I find that the landlord is not entitled to any compensation other than outstanding rent and loss of rent in the amount of \$4,000.00.

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 \$500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$3,500.00. 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 \$3,600.00.

### Conclusion

I dismiss the landlord's application for an order of possession without leave to reapply.

I dismiss the landlord's application for a monetary claim in respect to a late fee without leave to reapply.

I dismiss the landlord's application for damages to the rental unit with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$3,600.00 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: August 3, 2016

---

Residential Tenancy Branch

