



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WHEELER protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, 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 pursuant to section 67;
- a monetary or 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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and landlord's agent (the "landlord") attended the hearing and were each 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 tenant confirmed receipt of the landlord's application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application.

### Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include August 2016 unpaid rent of \$730.00. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I

amend the landlord' application to include a monetary claim for August 2016 unpaid rent of \$730.00.

At the outset of the hearing the landlord testified that he is no longer seeking the outstanding late fees in the form of a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement. Consequently this portion of the landlord's claim is dismissed without leave to reapply.

#### Issue(s) to be Decided

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

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

Is the landlord entitled to retain all or a portion of the tenants' 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 parties, the tenancy began on December 1, 2015 on a fixed term. Rent in the amount of \$730.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$365.00 and a pet deposit in the amount of \$250.00 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 or Utilities ("10 Day Notice") for unpaid rent of \$730.00 due on June 1, 2016 was issued to the tenant on June 20, 2016 by way of posting to the rental unit door where the tenant resides. The notice indicates an effective move-out-date of June 30, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on June 23, 2016, three days after its posting.

The landlord seeks a monetary order of \$1,825.00 for unpaid rent from June 2016 to August 2016. The landlord claimed that the tenant paid a total of \$365.00 in rent for the above three months.

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

The tenant confirmed he owes rent in the amounts stated by the landlord. The tenant attributed the non-payment of rent to a workplace injury. The tenant testified that his application for worker's compensation was denied and he subsequently sought medical employment insurance. The tenant received medical employment insurance and attempted to pay the landlord the outstanding rent. The tenant testified that on an undisclosed date he telephoned the landlord and informed him he could pay the rent. The tenant testified that the landlord advised him he would not accept the late rent payment.

### 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 within five days, 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 \$730.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from June 2016 to August 2016. Therefore, I find that the landlord is entitled to \$1,825.00 in rent.

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 \$365.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,460.00. 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 \$1,560.00.

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 money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$1,560.00.

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 18, 2016

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Residential Tenancy Branch