



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR, MNDC, LRE, OLC, PSF, RPP

### Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed or compensation for damage or loss;
2. To have the landlord comply with the Act, regulation or tenancy agreement;
3. To have the landlord provide services as agreed upon;
4. To have the landlord return personal property; and
5. Suspend or set conditions on the landlord's right to enter.

### Tenant's application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 11:10 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

### Landlord's application

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords' agent testified the Application for Dispute Resolution and Notice of Hearing were served in person on June 9, 2016, which was witness. I find that the tenant has been duly served in accordance with the Act.

The landlords' agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary matter

At the outset of the hearing the landlords' agent indicated that the tenant vacated the premises on July 10, 2016, and they no longer require an order of possession.

### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

### Background and Evidence

The landlords' agent testified the tenant did not pay all rent in 2015, and agreed in writing that they owed the amount of \$1,265.00, which was not paid prior to the tenancy ending. Filed in evidence is a copy of that agreement.

The landlords' agent testified that the tenant did not pay any rent for May, June and July 2016, in the total amount of \$1,950.00. The agent stated that the tenant vacated on July 10, 2016. The landlord seeks to recover unpaid rent in the amount of \$3,215.00. The landlord seeks to offset the amount owed with the security deposit of \$300.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the landlords' agent was the tenant did not pay all rent owed for 2015 and did not pay any rent for May, June and July 2016. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent in the total amount of **\$3,215.00**.

I find that the landlords have established a total monetary claim of **\$3,315.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit and interest of **\$300.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$3,015.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

#### Conclusion

The landlords are granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 12, 2016

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Residential Tenancy Branch