



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF, O

### 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 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy.

The tenant did not participate in the conference call hearing, which lasted approximately 16 minutes. 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 testified that on July 7, 2016 he forwarded the landlord's application for dispute resolution and supporting documents via registered mail to the tenant. 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 and supporting documents on July 12, 2016, the fifth day after its registered mailing.

At the outset of the hearing the landlord testified that the tenant vacated the rental unit on July 25, 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.

In relation to the "other" remedy the landlord testified that he was seeking an undisclosed amount of compensation for damage to the rental unit.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

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

Is the landlord entitled to compensation for damage to the rental unit?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on February 1, 2014 on a fixed term. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$750.00 at the start of the tenancy.

The landlord seeks a monetary order of \$5,645.84. Specifically the landlord seeks \$4,500.00 in unpaid rent from June 2016 to August 2016 and \$1,145.84 in outstanding strata fees. The landlord claimed that although the tenant vacated the rental unit on July 25, 2016 due to damage within the rental unit, the landlord was unable to re-rent the unit until September 1, 2016.

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*, *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 \$1,500.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from June to July 2016. I further find that the tenant should reasonably have known that the landlord would suffer a loss of income if he did not leave the unit in a reasonable condition to permit the landlord to re-rent the unit by August 1, 2016. Therefore I find the landlord is entitled to \$4,500.00 in rent for June, July and August 2016.

I find the landlord provided undisputed evidence that the tenant failed to pay outstanding strata fees. Accordingly I find the landlord is entitled to \$1,145.84 in strata fees.

Although the landlord testified to damages by the tenant, I find the claim to damages premature as the tenant had not vacated the rental unit at the time the application was made. For this reason I dismiss 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 strata fees in the amount of \$5,645.84.

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 \$750.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$4,895.84. 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 \$4,995.84.

### Conclusion

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

I dismiss the landlord's application for an "other" remedy in relation to damages, with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$4,995.84.

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 22, 2016

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Residential Tenancy Branch