



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNR OPR MNR FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied 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's application pursuant to the *Residential Tenancy Act* ("the Act") sought cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46.

The tenant did not attend this hearing, although I waited until 11:15 am in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant's application is dismissed as he did not attend in support of his own application. The landlord testified that the tenant had vacated the rental unit. She withdrew her application for an Order of Possession.

The landlord testified that she served the tenant with her Application for Dispute Resolution package with the Notice of Hearing on July 28, 2016 in person. She provided a typewritten document with a list of the materials she submitted for this hearing and an indication that they had been provided to the tenant. The document was signed by the tenant, indicating he had received the materials. I find that the tenant was sufficiently served with the landlord's Application for Dispute Resolution and provided notice of this hearing date.

### Issue(s) to be Decided

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

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

### Background and Evidence

This tenancy began on October 16, 2015 as a one year fixed term tenancy. The \$1180.00 monthly rent was due on the first of each month. The landlord submitted a copy of two residential tenancy agreements: the tenant's original agreement with a previous landlord and a new agreement with the current landlord beginning July 1, 2016. The landlord testified that she continues to hold the tenant's \$600.00 security deposit that was paid at the outset of the tenancy.

The landlord testified that the tenant vacated the rental unit on September 2, 2016 despite advising her that he would vacate by August 31, 2016. The landlord testified that the tenant did not pay \$1180.00 monthly rent in July 2016 or in August 2016 making a total rental arrears amount of \$2360.00.

The landlord provided documentary evidence to show her efforts to collect rent from the tenant including copies of text messages between the two parties after the tenant's rent cheque was returned for insufficient funds. Those messages include promises by the tenant to make his rental payment. The landlord provided undisputed sworn testimony supporting by her evidence that the tenant's cheques were returned to her; that she requested payment and attempted to arrange a payment plan; that the tenant agreed to pay rent to her by electronic means and sent only \$10.00.

### Analysis

I find that the landlord is entitled to receive an order for unpaid rent for the final two months of this tenancy. However, I find that the landlord is not entitled to September 2016 monthly rent from the tenant. The landlord testified that she will be moving in to the rental unit and therefore has suffered no loss of rental income as a result of the late move-out by the tenant. I find that the landlord is entitled to the equivalent of 2 days' rent (\$78.00) for "overholding" – I find that the tenant remained in the unit beyond the parameters of his tenancy without any compensation to the landlord.

As above, I find that the landlord has provided sufficient evidence to show that the tenant failed to pay rent in July 2016 and August 2016. The landlord provided both undisputed testimony and documentary evidence to support her claim for the two months' rent. Given the evidence before me, I find that the landlord is entitled to \$2360.00 in unpaid rent.

In accordance with section 72(2), and based on the landlord's testimony that she continues to hold a security deposit of \$600.00, I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award. I note that there is no interest payable on the security deposit for this period of time.

**72** (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

As the landlord was successful in her application, I find that the landlord is entitled to recover her \$100.00 filing fee.

### Conclusion

I issue a **monetary order** in favour of the landlord as follows,

Item	Amount
Unpaid Rent – July 2016	\$1180.00
Unpaid Rent – August 2016	1180.00
Over-holding by Tenant – 2 days	78.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1938.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: September 16, 2016

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Residential Tenancy Branch

