



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MND, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on October 20, 2016 for an Order of Possession and for a Monetary Order for damage to the rental unit and for unpaid rent. The Landlord also applied to recover the filing fee from the Tenant.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance by the Tenant during the 23 minute duration of the hearing and no submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord to the Tenant.

The Landlord testified that he served a copy of the Application and the Notice of Hearing documents to the Tenant personally at the rental unit address on October 24, 2016. The Landlord testified that he also served a copy of the documents by posting them to the rental unit door and by registered mail which he sent on October 24, 2016. The Landlord testified that the documents he served by registered mail were returned to him as unclaimed.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was served with the required documents for this hearing by personal service pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”) and by registered mail pursuant to Section 89(1) (c) of the Act which were deemed served on October 29, 2016. The hearing continued in the absence of the Tenant and the Landlord’s testimony and written evidence was carefully considered in this Decision as follows.

### Preliminary Issues

The Landlord explained that since making this Application, the Tenant had vacated the rental unit at the end of November 2016 pursuant to an Order of Possession which he obtained through a previous hearing. That hearing was conducted on November 8, 2016, the file number for which appears on the front page of this Decision. Therefore, the Landlord's request for an Order of Possession was dismissed.

The Landlord also explained that he had not had a chance to obtain the receipts and costs associated with his monetary claim for damage to the rental unit but was still in the process of doing so. As a result, I allowed the Landlord to withdraw this portion of his monetary claim with leave to re-apply. As a result, I continued to hear evidence only on the matter of unpaid rent in this tenancy.

#### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent in this tenancy?

#### Background and Evidence

The Landlord testified that this tenancy began on April 4, 2011 on a month to month basis. A written tenancy agreement established rent at \$500.00 payable by the Tenant on the first day of each month. The Tenant paid a \$175.00 security deposit to the Landlord at the start of the tenancy which the Landlord still retains.

The Landlord testified that at the start of 2015, the Tenant started to make partial payments of rent throughout the tenancy. The Landlord provided a Tenant ledger which shows these partial payments through to October 2016. The Landlord explained that for two months of the tenancy the Tenant was allowed to not pay rent of \$1,000.00 in exchange for a lawn mower which the Tenant gave to the Landlord in lieu for rent.

The Landlord testified that pursuant to the Tenant ledger, the Tenant had not paid rent in the amount of \$4,863.00 by October 2016, and also failed to pay rent for November 2016. Therefore, the total amount being sought by the Landlord from the Tenant was \$5,363.00 in unpaid rent. The Landlord also requested during the hearing that he be allowed to keep the Tenant's security deposit in partial satisfaction of his monetary claim for unpaid rent. The Landlord also claimed for registered mail postage costs but was informed during this hearing and these costs are not awardable by the Act to any party in dispute resolution proceedings.

#### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. I accept the Landlord's undisputed oral testimony and supporting ledger evidence that the Tenant failed to pay **\$5,363.00** in rent for this tenancy from January 2015 to the end of November 2016.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$100.00** filing fee for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$5,463.00**.

As the Landlord already holds **\$175.00** in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$5,288.00**.

Copies of this order are attached to the Landlord's copy of this Decision. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make voluntary payment. The Tenant may also be held liable for any costs incurred by the Landlord for enforcing the Monetary order.

### Conclusion

The Tenant failed to pay rent in this tenancy. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of \$5,288.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 13, 2016

---

Residential Tenancy Branch