



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants, male and female, did not attend this hearing, which lasted approximately 12 minutes. The landlord's three agents, landlord DF ("landlord"), "landlord NS" and "landlord KK," 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 that she was the tenant services coordinator, landlord NS confirmed that he is the caretaker, and landlord KK confirmed that she was the administrative coordinator, all of whom work for the landlord company named in this application. All three agents confirmed that they had authority to speak on behalf of the landlord company at this hearing. Landlord KK did not provide any testimony beyond the above information, at this hearing.

The landlord testified that the two tenants were each served separately with a copy of the landlord's application for dispute resolution hearing package on November 28, 2016, by way of registered mail to the rental unit. The landlord provided two Canada Post receipts, tracking numbers and printouts of delivery, with this application. The landlord confirmed that the tenants were still living at the rental unit at the time and the Canada Post tracking number printouts indicate that the male tenant signed for both packages on November 29, 2016. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on December 3, 2016, five days after their registered mailings.

I asked the landlord to provide me with a copy of all legal notices of rent increase (“NRI’s”) issued to the tenants to increase the rent from the original amount under the tenancy agreement to the last rent when the tenants vacated the rental unit. The landlord had not provided these documents prior to the hearing, with the exception of the very last notice of rent increase. I find that there is no prejudice to the tenants for the landlord sending me the documents after the hearing, as the landlord testified that the tenants received these documents with proper notice, during their tenancy. I provided the landlord with a facsimile number to provide these documents to me after the hearing. I received the documents after the hearing on January 30, 2017 and I considered them in my decision.

Landlord NS testified that both tenants were served with the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 8, 2016 (“10 Day Notice”) on the same date, by posting to their rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord’s 10 Day Notice on November 11, 2016, three days after its posting.

At the outset of the hearing, the landlord confirmed that she did not require an order of possession as the tenants had already vacated the rental unit. Accordingly, this portion of the landlord’s application is dismissed without leave to reapply.

#### Issues to be Decided

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

Is the landlord entitled to retain the tenants’ security deposit?

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

#### Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on December 1, 2008 and ended on November 30, 2016. The written tenancy agreement indicates that rent was initially \$1,035.00 at the start of this tenancy. The landlord provided copies of NRI’s, which she said were issued to the tenants with at least three months’ notice for each notice, increasing the monthly rent by the allowable *Residential Tenancy Regulation* (“*Regulation*”) amount each year from December 1, 2009 to December 1, 2015. Monthly rent from December 1, 2015 until the tenants vacated the rental unit was \$1,278.00, payable on the first day of each month. A security deposit of \$517.50 was paid by the tenants and the landlord continues to retain

this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord seeks a monetary order of \$2,556.00 for unpaid rent from November to December 2016. The landlord said that the tenants have not paid rent of \$1,278.00 for each of the above months. The landlord confirmed that she was no longer seeking a loss for January 2016 rent of \$1,278.00, as initially stated in the landlord's application. The landlord seeks to offset the tenants' security deposit of \$517.50 against the rental loss. The landlord also seeks to recover the \$100.00 application filing fee from the tenants.

### Analysis

Section 26 of the *Act* states that rent is due on the date indicated in the tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I accept the landlord's evidence that rent of \$1,278.00 was due from December 1, 2015 until the tenants vacated the rental unit on November 30, 2016. The landlord provided NRI's for this tenancy, indicating that the rent was raised from the initial tenancy agreement amount of \$1,035.00 to \$1,278.00. The most recent NRI, dated August 19, 2015, raised the rent from \$1,247.00 to \$1,278.00, an increase of \$31.00, which was the legal allowable *Regulation* amount of 2.5% for the year of 2015, effective as of December 1, 2015. I accept that the tenants were properly served with this most recent NRI at least three months in advance, as required by the *Act*, and confirmed by the landlord.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,278.00 for November 2016, while they were still living in the rental unit. The 10 Day Notice was issued to the tenants for unpaid rent due on November 1, 2016, in the amount of \$1,278.00. Accordingly, I find that the landlord is entitled to \$1,278.00 in unpaid rent from the tenants for November 2016.

The landlord provided undisputed evidence of a one month's rental loss of \$1,278.00 for December 2016. The tenants did not vacate by the effective move-out date in the 10 Day Notice, which was November 18, 2016. The tenants moved out on November 30,

2016. I find that one month is a reasonable period of time to claim for a rental loss, as rent of \$1,278.00 was due on December 1, 2016. The tenants did not pay any rent for this time period. Therefore, I find that the landlord is entitled to \$1,278.00 in rental loss for December 2016.

The landlord continues to hold the tenants' security deposit of \$517.50. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$517.50 in partial satisfaction of the monetary award.

As the landlord was mainly successful in this application, I find that it is entitled to recover the \$100.00 application filing fee from the tenant.

### Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

I order the landlord to retain the tenants' entire security deposit of \$517.50 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$2,138.50 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: January 30, 2017

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Residential Tenancy Branch