



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF; MT, CNR, MNDC, DRI, OLC, PSF, LRE, RR, FF

### 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 for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "Regulation") or tenancy agreement 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.

This hearing also addressed the tenant's cross application for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The first hearing held December 5, 2016 was adjourned due to the expiry of time. The issue of tenancy was addressed in the December 5, 2016 hearing and resulted in the settlement of that matter. An interim decision was issued which set out the terms of the settlement along with an order of possession. Consequently the parties are no longer seeking an order of possession or cancellation of the 10 Day Notice and these portions of their respective applications are dismissed without leave to reapply.

The tenant, landlord and court reporter attended both hearings. In both hearings, all parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, the party's confirmed that they had received the other party's application for dispute resolution package. The tenant confirmed receipt of the landlord's evidence package and confirmed she did not provide any documentary evidence for the hearing. During the first hearing the tenant requested

an adjournment to provide documentary evidence. The adjournment was denied on this basis and the parties were advised I would not be considering any further written submissions. The parties complied and did not provide any further submissions.

#### Preliminary Issue – Rent Increase

The tenant confirmed that although the landlord verbally told her of a rent increase, no rent increase amount was paid to the landlord. As no rent increase was paid and as the parties agreed by way of settlement at the first hearing that rent for the last two month's of tenancy is set at \$1,150.00, the claim in relation to the rent increase is no longer relevant and I dismiss this claim.

#### Issue(s) to be Decided

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

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order for the landlord to provide services or facilities required by law?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is either party authorized to recover the filing fee for this application?

#### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2013 on a month-to-month basis with monthly rent established at \$1,375.00 payable on the first of each month. The tenant remitted a security deposit in the amount of \$687.50 and pet deposit in the amount of \$687.50 at the start of the tenancy. The tenant currently resides in the rental unit, however the tenancy is set to end February 28, 2017 by 1:00 p.m.

The parties testified and agreed that the landlord reduced the rent to \$1,325.00 sometime in 2014 and reduced the rent further to \$1,150.00 sometime between March and May of 2016. The parties agreed these were verbal agreements and the written tenancy agreement remained unchanged.

### Landlord Claims

#### *Monetary Order for Unpaid Rent*

In the landlord's original application filed October 17, 2016 he sought \$9,575.00 in unpaid rent. On October 21, 2016 the landlord amended his application to reflect a new monetary amount of \$8,975.00. At the hearing the landlord testified that because he had received rent since filing his amended application he is now seeking a reduced monetary order of \$5,525.00.

The landlord provided summaries of interact e-transfers for each year of the tenancy. Based on these summaries, the landlord calculates he is owed \$1,550.00 in outstanding rent for 2013, \$50.00 for 2014, \$2,300.00 for 2015 and \$1,625.00 for 2016.

#### *Filing Fee*

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

### Tenant Reply and Claims

In reply to the landlord's claim of unpaid rent, the tenant testified that she has paid all rent to date. The tenant testified that in addition to e-transfer payments, cheques and cash were sometimes used to pay rent.

#### *Monetary Order*

The tenant's application specifies she is seeking a monetary order of \$600.00. During the first hearing the tenant testified she sought this amount in compensation for the landlord's failure to conduct repairs to the front entrance. The tenant did not amend her application to increase the monetary order yet during the second hearing the tenant testified to an amount greater than \$600.00 for various infractions committed by the landlord.

#### *Order for Services or Facilities*

When asked what services or facilities the landlord failed to provide, the tenant testified that the landlord blocked access to the backyard, but acknowledged this was no longer an issue.

#### *Order to Suspend or Set Conditions on the Landlord's Right to Enter Rental Unit*

The tenant testified that the landlord has conducted numerous inspections but one inspection in particular led her to include a claim to suspend the landlord's right to enter. The tenant testified that although the landlord did not provide 24 hours notice, she permitted the landlord access to the rental unit on October 3, 2016. The landlord stayed in the rental unit for over 90 minutes. On this same date the landlord returned to her door a couple hours later asking the tenant to sign some paperwork, when the tenant refused she testified that the landlord blocked the door, refusing to let her exit the rental unit. The tenant testified that she has contacted the police regarding this incident and plans to file a restraining order.

#### *Rent Reduction*

Although the tenant already indicated during the first hearing that she sought a \$600.00 monetary order for the landlord's failure to conduct repairs to the front entrance, during the second hearing the tenant testified that she sought a rent reduction in the amount of \$3,750.00 for these same repairs. She testified that the condition inspection report establishes that the landlord was obligated to repair the rotten steps, rotten railing, doorbell and screen door and because he failed to do this in the time stipulated by the condition inspection report, she seeks \$3,750.00 in the form of a rent reduction.

Filing Fee

The tenant is also seeking to recover the \$100.00 filing fee for this application from the landlord.

Landlord Reply

The landlord acknowledged he received rent in the form of cheques and/or cash at times; however he was uncertain of the amounts and dates. The landlord did not provide a reply to the tenants remaining claims.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on each party to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails.

Landlord Claims

The landlord seeks a monetary order in the amount of \$5,525.00. The landlord contends that the tenant owes rent dating back to 2013, whereas the tenant denies she owes any outstanding rent.

While I prefer the testimony of the landlord and am satisfied on the balance of probabilities that the tenant owes rent, I find the landlord has provided insufficient evidence to support the amount being claimed. The landlord acknowledged receipt of cash payments and cheques yet failed to include them in his calculation of outstanding rent. I find the landlord has failed to meet the burden of proof to prove the value of this claim. Therefore I dismiss the landlord's monetary claim due to insufficient evidence, without leave to reapply.

The landlord did not provide testimony or evidence in relation to the monetary order he sought for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, in his application therefore this portion of his claim is dismissed without leave to reapply.

As the landlord was not successful in establishing a monetary claim I find he is not entitled to recover the filing fee or retain the security deposit and these portions of his application are dismissed.

## Tenant Claims

### *Monetary Order/Rent Reduction*

The tenant's application indicates she seeks a monetary order in the amount of \$600.00 yet during the hearing she sought a far greater amount. The tenant did not file an amendment, nor did she request an amendment at the hearing.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. Since the tenant did not file an amendment and serve an amendment to the landlord with an amount greater than \$600.00, there would be a denial of the fundamental right to natural justice if I were to consider an amendment that was never made or provided to the landlord. For the reasons stated above, I dismiss the tenant's application for a monetary order in excess of \$600.00.

The tenant did not provide a detailed calculation of the \$600.00 in the "details of the dispute" box in her application, nor did she provide a monetary worksheet. During the first hearing the tenant testified she sought a \$600.00 monetary order for the landlord failure's to make repairs to the front entrance, however during the second hearing the tenant testified that she sought a \$3,750.00 rent reduction for the landlord's failure to make these same repairs. Based on my above finding that in the absence of an amendment the tenant cannot seek a monetary order in excess of \$600.00, I dismiss the tenant's application for a \$3,750.00 rent reduction.

Based on the tenant's own testimony, I find the tenant's \$600.00 claim relates to the front entrance repairs. Upon review of the condition inspection report I find the landlord was obligated to repair the front entrance door, canopy, and exterior siding no later than September 2013. I find the repairs listed by the tenant are not congruent with those listed on the condition inspection report and therefore find the tenant has not met her onus in proving the landlord was in violation of the tenancy agreement. I dismiss the tenant's claim for a monetary order in the amount of \$600.00.

### *Order for Services or Facilities*

I dismiss the tenant's application for an order for the landlord to provide services or facilities required by law on the basis that the tenant acknowledged this order was no longer needed.

### *Order to Suspend or Set Conditions on the Landlord's Right to Enter Rental Unit*

Section 29 of the *Act* sets out the provisions that establish when a landlord can enter a tenanted rental unit. In the circumstances described, the landlord abided by these provisions, as he was permitted access by the tenant. Therefore I find the landlord did not contravene the *Act* and the described event does not warrant suspension on the landlord's right to enter. I find such a restriction would impede access to the rental unit in the event of an emergency. I dismiss this portion of the tenant's claim, without leave to reapply.

### *Filing Fee*

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The landlord's application to retain the security deposit is dismissed with leave to reapply. The reminder of the landlord's application is dismissed without leave to reapply.

The tenant's entire application is dismissed without leave to reapply.

Neither party is entitled to recover the filing fee for this application.

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 25, 2017

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Residential Tenancy Branch