



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlords' 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 damages 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord MC confirmed he represented both of the landlords in the application (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice, the landlord's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 10 Day Notice, the landlord's application and their respective evidence.

At the outset of the hearing, the landlord testified that the tenant has vacated the rental unit and an Order of Possession is no longer being sought. The landlords' application for an Order of Possession is withdrawn.

At the outset of the hearing the landlord made an application requesting to amend the monetary amount of the award sought. The landlord requested to amend their application to seek a claim for damages and loss. I decline to amend the landlords'

Application to include a claim for loss and damages as the landlords have not served the tenants in accordance with Rule 4.6 and adding a new head of claim without proper notice would be prejudicial to the tenants. The landlord is at leave to reapply for these other monetary claims.

#### Issue(s) to be Decided

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

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

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

#### Background and Evidence

The parties agreed on the following facts. This tenancy began in March, 2016. The monthly rent was \$1,650.00 payable on the first of each month. A security deposit of \$825.00 was paid by the tenant at the start of the tenancy and is held by the landlord.

The landlord testified that the tenancy is in arrears by \$2,050.00 as at February 27, 2017, the date of the hearing. The landlord testified that the tenant only made partial payment in December 2016 and an amount of \$400.00 remains outstanding. The landlord said that the tenant failed to pay any rent for January, 2017 and the total rent arrears is \$2,050.00.

The tenant agreed with the landlord's calculation of the rent arrears and testified that he has not made full rent payment for December and January. The tenant testified that he intends to pay the landlord but his current priority is to find a new residence.

#### Analysis

I accept the evidence of the parties that the total amount of arrears for this tenancy is \$2,050.00. Accordingly, I issue a monetary award in the landlords' favour for \$2,050.00 for unpaid rent as at February 27, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlords' application was successful, the landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$825.00 in partial satisfaction of the monetary award issued in the landlords' favour.

### Conclusion

The landlord's application for an Order of Possession is withdrawn.

I issue a monetary order in the landlord's favour in the amount of \$1,325.00 under the following terms, which allows the landlords to recover unpaid rent for the months of December, and January, and the filing fee for their application:

Item	Amount
Unpaid Rent December	\$400.00
Unpaid Rent January	\$1,650.00
Filing Fees	\$100.00
Less Security Deposit	-\$825.00
<b>Total Monetary Order</b>	<b>\$1,325.00</b>

The tenant must be served with this Order as soon as possible. Should the tenants 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: February 27, 2017

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Residential Tenancy Branch

