



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPR MNR

### **Introduction**

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, 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.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord's agent, AR, appeared on behalf of the ('the landlord'), and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated February 6, 2017, with an effective date of February 16, 2017, by posting the notice on the tenant's door. In accordance with sections 88 and 90 of the Act, I find the tenant deemed served with the 10 Day Notice on February 9, 2017, three days after posting.

The landlord testified that the hearing package and evidence was served to the tenant by way of registered mail on March 8, 2017. In accordance with sections 88, 89 and 90 of the Act, I find the tenant deemed served with copies of the hearing package and evidence on March 13, 2017, five days after mailing.

The landlord indicated in the hearing that the tenant had moved out on March 13, 2017, and is cancelling their application for an Order of Possession. Accordingly this portion of the landlord's application is cancelled.

### **Issues(s) to be Decided**

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

### **Background and Evidence**

The landlord testified regarding the following facts. This month-to-month tenancy started in May of 2014, with rent currently set at \$869.00 per month. The landlord collected a security deposit in the amount of \$412.50, and continues to hold it.

The landlord issued the 10 Day Notice on February 6, 2017 as the tenant did not pay rent for the month of February 2017. The tenant had moved out on March 13, 2017, and did not pay the outstanding rent. The landlord is seeking a monetary order for the unpaid February rent.

### **Analysis**

**Section 26** of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept the landlord's testimony that the tenant did not pay rent in the amount of \$869.00 for the month of February 2017. Therefore, I find that the landlord is entitled to \$869.00 in rental arrears for the above period.

The landlord continues to hold the tenant's security deposit of \$412.50. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit of \$412.50 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

**Conclusion**

The landlord cancelled their application for an Order of Possession as the tenant had moved out of the rental suite.

I issue a \$456.50 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, and also allows the landlord to retain the tenant's security deposit. The tenant must be served with this Order as soon as possible. Should the tenant 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: March 27, 2017

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Residential Tenancy Branch