



# Dispute Resolution Services

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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 utilities;
- 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.

The tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. Landlord RM and landlord PM (collectively "the landlord") 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 testified that on March 1, 2017 she forwarded the landlords' application for dispute resolution hearing package via registered mail to the tenant. The landlords provided a Canada Post tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application March 6, 2017, the fifth day after its registered mailing.

### Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that she wished to amend the landlords application to increase the monetary claim to include March unpaid rent of \$850.00 and utilities of \$100.00. I find that the tenant should reasonably have known that the landlords would suffer this loss of income if he did not pay the rent or utilities or vacate the rental unit to permit the landlords to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlords' application to include a monetary claim for March 2017 unpaid rent and utilities for a total amount of \$950.00.

### Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent and utilities?

Are the landlords entitled to a monetary order for unpaid rent and utilities?

Are the landlords entitled to a monetary order to keep all or part of the security deposit?

Are the landlords authorized to recover the filing fee for this application from the tenants?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on September 15, 2016 on a fixed term until March 15, 2017. Rent in the amount of \$850.00 is payable on the 15<sup>th</sup> of each month. The tenant remitted a security deposit in the amount of \$425.00 at the start of the tenancy. The tenant still occupies the rental unit.

The landlord testified that she served the tenant with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 16, 2017 ("10 Day Notice"), on the same date, by way of posting to the rental unit door where the tenant was residing. The landlords provided a signed, witness proof of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on February 19, 2017, three days after its posting. The notice indicates an effective move-out-date of February 26, 2017.

The landlords seek a monetary order of \$4,750.00 for unpaid rent and utilities from November 2016 to March 2017. The landlord claimed that the tenant has not paid any rent or utilities for the above five months.

The landlord testified that the landlords are seeking \$200.00 for the anticipated cleaning of the unit.

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

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlords' testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy

ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlords are entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Upon review of the submitted tenancy agreement, I find that the landlords proved that the current rent for this unit is \$850.00 and the tenant is responsible for utilities in the amount of \$100.00 per month. I find the landlords provided undisputed evidence that the tenant failed to pay full rent or utilities from November 2016 to March 2017. Therefore, I find that the landlords are entitled to \$4,750.00 in rent and utilities.

In relation to the landlords' request for damages for anticipated cleaning in the amount of \$200.00, I find I am not obligated to make a finding as this did not form part of the landlords' application and the landlord did not provide an amendment to include this.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$4,850.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in the total amount of \$425.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$4,425.00.

### Conclusion

I grant an order of possession to the landlords effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlords' favour in the amount of \$4,425.00 against the tenant.

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 24, 2017

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Residential Tenancy Branch

