



# 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 was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that she served the tenant with the Landlord's Application for Dispute Resolution, notice of this hearing and evidentiary material by personally handing the package to the tenant on February 21, 2017. I accept that testimony, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the landlord testified that the tenant vacated the rental unit on or about February 25, 2017 and the application for an Order of Possession is withdrawn.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on February 15, 2016 and the tenant moved out of the rental unit on or about February 25, 2017. Rent in the

amount of \$850.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenant failed to pay rent when it was due in February, 2017 and the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated February 2, 2017 and contains an effective date of vacancy of February 13, 2017 for unpaid rent in the amount of \$850.00 that was due on February 1, 2017. The tenant has not paid the rent and has not served the landlord with an application for dispute resolution disputing the notice.

The landlord also testified that the parties had exchanged text messages about the unpaid rent, showings to prospective tenants and about the tenant vacating the rental unit, copies of which have been provided for this hearing. The landlord advertised the rental unit for a March 1, 2017 availability on Facebook and by putting fliers in the post office and other prominent places in the community commencing around February 5, 2017 and had prospective tenants secured for March 1, 2017, but by February 15, 2017 the tenant still had not moved out. The prospective tenants agreed to wait a few days to see if the tenant moved out, but hadn't by the 20<sup>th</sup> of the month the tenant was still in the rental unit, and the prospective tenants rented another place.

The landlord claims \$850.00 for February's rent as well as \$850.00 for loss of rental revenue for March, 2017, recovery of the \$100.00 filing fee, and an order permitting the landlord to keep the \$400.00 security deposit in partial satisfaction of the claim.

### Analysis

I accept the undisputed testimony of the landlord that the tenant has not paid any rent for February, 2017, and I find that the testimony is consistent with the information contained in the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I am satisfied that the landlord has established a monetary claim in the amount of \$850.00 for February's rent.

With respect to the landlord's claim for loss of rental revenue for March, 2017, the *Residential Tenancy Act* requires a landlord to do whatever is reasonable to mitigate any loss suffered. I have read the text messages provided by the landlord which show that the rental unit was being shown to prospective tenants in January, 2017, but the tenant didn't move out until February 25, 2017 without giving any notice in writing to the landlord other than a text message. I am also satisfied that the landlord lost a

prospective tenant for a tenancy to commence on March 1, 2017 because no one was sure whether or not the tenant would be out by then. Since rent is payable on the 1<sup>st</sup> day of each month, any notice that the tenant might have given the landlord by the date the notice to end the tenancy was issued would not have taken effect until the end of March, 2017. I find that the landlord has established mitigation, and the tenant has breached the *Act* resulting in a loss of rental revenue for the landlord, and the landlord is entitled to recover rent for March.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$400.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,400.00.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the \$400.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,400.00.

This order is final and binding and may be enforced.

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 17, 2017

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Residential Tenancy Branch