



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR, MNDC, FF, PSF, RR, O

### Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (the *Act*) the landlord applied 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*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 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 monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord participated in the teleconference. The tenant had fully instructed legal counsel represent her. Both parties were given a full opportunity to be heard, to present

their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

At the outset of the hearing both parties confirmed that the tenant move out of the rental unit on April 30, 2017. Both parties also advised that the only item each seeks is their monetary claim. Based on the information submitted by both parties each party only seeks a monetary order, accordingly, the balance of each party's application is dismissed.

### Preliminary Issue

The tenants counsel advised that he was instructed by the tenant to request an adjournment. Counsel advised that the tenant was ill and not able to submit any documentation in regards to her monetary claim because of that illness and unable to participate in today's hearing. The landlord opposed the adjournment request. The landlord submitted that both parties were under the same time constraints for their claims and that the matter should go ahead. Counsel did not provide any specifics as to the tenant's illness, severity and length of time that she would not be available. In addition, counsel provided little information as to when this illness began and how it prevented the tenant from submitting evidence.

The tenant was able to arrange for counsel to represent her but failed to provide sufficient reasons as to why she was not prepared for this hearing or as to why she did not submit any documentary evidence to support her monetary claim and have her counsel conduct the hearing on her behalf. The tenant initiated the dispute resolution process by filing her application first and had the ability to request a date that was suitable. Based on the very limited and vague submissions, I hereby deny the request to adjourn as per Residential Tenancy Branch Rules of Procedure 7.11. The hearing proceed and completed on the basis that each party was seeking a monetary order only.

### Issues(s) to be Decided

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

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

Is the tenant entitled to a monetary award as compensation for loss or damage under the Act, regulation or tenancy agreement?

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

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about January 17, 2017 for a fixed term that was to end on May 1, 2017. The landlord testified that the tenant moved out on April 30, 2017. Rent in the amount of \$2500.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month(s) of March and April on April 6, 2017 the landlord served the tenant with a notice to end tenancy. The landlord advised that he is seeking \$5000.00 in unpaid rent for March and April and the recovery of the \$100.00 filing fee for a total award of \$5100.00.

In regards to the tenants' application, the landlord testified that he disputes it in its entirety. The landlord testified that shortly after the tenant moved in the tenant advised him of some burnt out lightbulbs, a small leak in the roof and a broken lock. The landlord testified that he addressed all of these issues shortly thereafter and never heard about it again until the tenant filed for dispute resolution. The landlord testified that the tenant became difficult to deal with and to gain access to the unit. The landlord testified that when he conducted some repairs he smelled gas and wanted to address it but the tenant denied him access. The landlord testified that the tenant phoned the police each time the landlord attended at the property. The landlord adamantly denies that he vandalized the tenants' car or threatened her in any way. The landlord testified that he feels that tenant is a scam artist and that she "scammed me".

Counsel was given instructions and to make the following submissions. Counsel submits that the landlord misrepresented the home and that it was uninhabitable. Counsel submits that the home made the tenant physically sick. Counsel submits that the leak in the roof was significant enough to cause damage to the tenants' personal belongings and create an environment of mold growth that made the tenant sick. Counsel submits that his client felt justified in withholding the rent as the landlord had been dishonest in explaining the condition of the home. Counsel further submits that the landlord turned off the gas to the home and that was necessary service. Counsel submits that the landlord vandalized the tenants' car and slashed her tires, thus causing the tenant to be fearful of him and unable to communicate with him. Counsel submits that the landlord breached the Act and that his client requests \$13550.00 as compensation.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below. Both parties agree that March and April rent was unpaid. However, the landlord submits that the tenant was not justified in withholding payment, but the tenants counsel submits she was. The tenant has made allegations that the home was unsuitable for habitation however; she did not provide any documentation in that regard.

The tenant submitted a copy of the notice to end tenancy and the tenancy agreement only for this hearing. The tenant did not submit photos or video to illustrate the condition of the home, witness statements, or produce witnesses for this hearing to corroborate her position. Based on the insufficient evidence submitted by the tenant, and on a balance of probabilities, I hereby dismiss the tenants' application in its entirety. Based on the evidence provided by the landlord, and counsels confirmation that the tenant did not pay the March and April rent, I am satisfied that the tenants continue to owe the landlord unpaid rent in the amount of \$5000.00. The landlord is also entitled to the recovery of the \$100.00 filing fee. I issue a monetary award in the landlord's favour in the amount of \$5100.00

### Conclusion

The landlord is granted a monetary order for \$5100.00. The tenants' application is dismissed in its entirety.

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: May 17, 2017

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Residential Tenancy Branch