



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WOODBINE TOWNHOMES  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPR MNR MND MNSD FF

### **Introduction**

This hearing dealt with the landlord's 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, pursuant to section 67;
- a monetary order for damage to the unit, site, or property pursuant to section 67;
- authorization to retain all or a portion of the tenants' deposits in partial satisfaction of the monetary order requested pursuant to section 38
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, MW ('landlord'), attended the hearing by way of conference call, the tenants did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package on June 16, 2017 by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on June 21, 2017, five days after its registered mailing.

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 2, 2017 ("10 Day Notice"), on June 2, 2017, by leaving the Notice in the tenants' mail box. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on June 5, 2017, three days after its posting.

The landlord's agent indicated during the hearing that the tenants had moved out on July 7, 2017. The landlord withdrew their application for an Order of Possession.

Although the landlords applied for a monetary Order of \$3,280.00 in their initial claim, since they applied another \$1,240.00 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$3,280.00 to \$4,520.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard, I find the landlord had applied for monetary compensation for damage related to the end of this tenancy before the tenancy had ended. As this application was made on June 13, 2017 before the tenants had moved out, and the landlord's monetary application is unrelated to the main section of this dispute which is for monetary compensation for unpaid rent, I am dismissing the landlord's application for monetary compensation for damages with leave to reapply.

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

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' deposits in partial satisfaction of the monetary order requested?

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

### **Background and Evidence**

The landlord's agent, MW, testified regarding the following facts. This tenancy started on April 1, 2016, with rent currently set at \$1,240.00 per month, payable on the first of the month. The landlord collected a security deposit in the amount of \$400.00, a pet damage deposit in the amount of \$600.00, a key deposit in the amount of \$100.00, and a gate FOB deposit in the amount of \$25.00. The landlord is still in possession of all these deposits.

The landlord issued the 10 Day Notice on June 2, 2017 as the tenants failed to pay \$1,255.00 in outstanding rent. The tenants have not paid any rent since the 10 Day Notice was issued, and owes the following in unpaid rent and fees: \$15.00 for May

2017, \$1,240.00 for June and July 2017, and \$25.00 in late fees. The total outstanding rent is \$2,495.00. The landlord is seeking a monetary order for the unpaid rent as well as the \$25.00 late fee plus recovery of the \$100.00 filing fee for their application.

### **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 tenants did not attend. I accept the landlord's testimony that the tenants did not pay rent in the amount of \$15.00 for the month of March 2017, and \$1,240.00 each for the months of June and July 2017. Therefore, I find that the landlord is entitled to \$2,495.00 in arrears for the above period plus \$25.00 late fee and \$100.00 for recovery of the filing fee for a total monetary order of \$2,620.00.

The landlord continues to hold the tenants' security deposit of \$400.00, the pet damage deposit in the amount of \$600.00 and the key and FOB deposits in the amount of \$125.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' deposits plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

### **Conclusion**

The landlord withdrew their application for an Order of Possession.

The landlord's application in relation to the damages left by the tenants is dismissed with leave to reapply.

I issue a Monetary Order in the landlord's favour in the amount of \$1,495.00 against the tenants for the following items:

<b>Item</b>	<b>Amount</b>
Rental Arrears for May 2017	\$15.00
Rental Arrears for June 2017	1,240.00
Rental Arrears for July 2017	1,240.00
Late Fee	25.00
Less Security Deposit	-400.00
Less Pet Damage Deposit	-600.00
Less key and FOB deposits	-125.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Award</b>	<b>\$1,495.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: August 17, 2017

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Residential Tenancy Branch