



# 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 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;
- 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 his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord entered into written evidence a signed and witnessed Proof of Service Document attesting to the fact that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at 9:50 p.m. on May 27, 2017. I find that the 10 Day Notice identifying \$920.00 in rent owing for this tenancy was deemed served to the tenant on May 30, 2017, in accordance with sections 88 and 90 of the *Act*.

The landlord testified that he sent the tenant a copy of the dispute resolution hearing package including notice of this hearing by registered mail on June 10, 2017. He provided a copy of the Canada Post Tracking Number to confirm this registered mailing. He also testified that Canada Post's online tracking system confirmed that the tenant picked up the registered mail, a fact confirmed by the tenant when he spoke with him. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with this hearing package on June 15, 2017, the fifth day after its registered mailing.

The landlord also testified that he sent the tenant copies of his written evidence by registered mail with the hearing package and a DVD containing evidence two weeks before the hearing. I am satisfied that this evidence was served in accordance with section 88 and 90 of the *Act*.

At the hearing, the landlord amended his application for a monetary award from \$1,440.00 to \$1,960.00 to reflect the tenant's failure to pay \$520.00 in monthly rent for July 2017. I allowed this amendment to the landlord's monetary application, as this was clearly rent that the tenant would have known had become owing since the landlord submitted his application for dispute resolution.

Although the landlord applied for an Order of Possession for unpaid rent, he testified at the hearing that the tenant vacated the rental property on or about July 31, 2017. As the landlord confirmed that he now has possession of this rental unit, he withdrew his application for an Order of Possession. The landlord's application for an Order of Possession is withdrawn.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The landlord gave undisputed sworn testimony that this tenancy for a basement bedroom in a home, rented to him by his father, began on or about December 1, 2015. He provided written evidence to support his sworn testimony that his father rented him this entire home and gave him permission to sublet portions of the house to other tenants, as his agent. The landlord said that the tenant was responsible for monthly rent of \$520.00, payable on the first of each month, although no written tenancy agreement with the tenant was in place. The landlord testified that he continues to hold a \$260.00 security deposit paid by the tenant on or about November 24, 2015.

The landlord's original application for a monetary award of \$1,440.00 was for the following items:

<b>Item</b>	<b>Amount</b>
Unpaid April 2017 Rent	\$400.00
Unpaid May 2017 Rent	520.00
Unpaid June 2017 Rent	520.00
<b>Total Monetary Order</b>	<b>\$1,440.00</b>

In addition, the landlord sought recovery of the \$100.00 filing fee plus the \$520.00 in unpaid monthly rent for July 2017.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the undisputed written evidence and sworn testimony, I find that the landlord is entitled to a monetary award of \$1,960.00 for unpaid rent owing for this tenancy for the period from April 2017 until the tenancy ended on or about July 2017.

As the landlord has been successful in his application, I also allow him to recover his \$100.00 filing fee from the tenant.

The landlord testified that he continues to hold the tenant's security deposit of \$260.00 plus interest from November 24, 2015 until the date of this decision. I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. Over that period, no interest is payable on the landlord's retention of the security deposit.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid April 2017 Rent	\$400.00
Unpaid May 2017 Rent	520.00
Unpaid June 2017 Rent	520.00
Unpaid July 2017 Rent	520.00
Less Security Deposit	-260.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,800.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession for unpaid rent is withdrawn.

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 04, 2017

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**Residential Tenancy Branch**