



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This participatory hearing was convened after the issuance of a July 20, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord.

The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

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- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

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. Both landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord M.U. (the landlord) stated that he would be representing the interests of both landlords in this matter.

The landlord testified that a copy of the notice of this adjourned hearing was personally served by the landlord's female friend to the tenant on August 14, 2017. The landlord testified that he was a witness to this service. Based on the undisputed testimony of the landlord, I find that the tenant was duly served with the notice of this adjourned hearing on August 14, 2017, in accordance with section 89 of the *Act*.

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) to the tenant's door at 5:00 p.m. on July 04, 2017. In accordance with sections 88 and 90 of the *Act* I find that the 10 Day Notice, identifying

\$1,785.00 in rent owing for this tenancy, was deemed served to the tenant on July 07, 2017,

The landlord also gave witnessed documentary evidence that he personally handed the tenant a copy of all documentary evidence as a part of the direct request proceeding package on July 14, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the evidence on July 14, 2017.

At the hearing the landlord amended his application for a monetary award from \$1,785.00 to \$892.50 as the landlord transferred ownership of the rental unit to another party in the middle of July 2017 and is only seeking the unpaid rent for the period of July 01, 2017 until July 15, 2017. I allowed this amendment to the landlord's monetary application as the reduced claim amount does not prejudice the tenant.

The landlord also requested to amend his application to have the tenant reimburse the landlord for cost of the filing fee for the landlord's application. I allowed this amendment as the ability to recover the filing fee, while not currently allowed for the direct request process, is an option normally available for all applicants involved in a participatory hearing.

The landlord's amended application for a monetary award of \$992.50 is for the following items:

Item	Amount
Unpaid rent July 01, 2017 to July 15, 2017	\$892.50
Filing Fee for this application	100.00
<b>Amended Requested Monetary Order</b>	<b>\$992.50</b>

Although the landlord applied for an Order of Possession for unpaid rent, he testified at the hearing that the ownership of the rental property has been transferred to another party and that he no longer has a legal right to possession of the rental unit. The landlord's application for an Order of Possession is withdrawn.

#### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord gave written evidence that this tenancy began on September 15, 2016, with a monthly rent of \$1,785.00 due on the first day of the month. The landlord testified that he is no longer in possession of the security deposit as it has been transferred to the new owner of the rental unit.

A copy of the signed 10 Day Notice, dated June 04, 2017, with an effective date of June 14, 2017, was included in the landlord's evidence.

### 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 landlords are entitled to a monetary award of \$892.50 for unpaid rent owing for this tenancy for the period from July 01, 2017 to July 15, 2017.

As the landlords have been successful in this application, I also allow them to recover their \$100.00 filing fee from the tenant.

### Conclusion

I grant a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and the filing fee for this application:

Item	Amount
Unpaid rent July 01, 2017 to July 15, 2017	\$892.50
Filing Fee for this application	100.00
<b>Amended Requested Monetary Order</b>	<b>\$992.50</b>

The landlords are 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 landlords' 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 23, 2017

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Residential Tenancy Branch