



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the “Application”) that was adjourned to a participatory hearing. The Landlord filed under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenants did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Landlord testified that the Application and the Notice of Direct Request were sent to each of the Tenants individually on August 4, 2017, by registered mail and provided copies of the registered mail receipts in the evidence before me. As a result, I find that the Tenants were duly served these documents on August 9, 2017, five days after the registered mailing.

The Landlord also testified that the Notice of Hearing was personally served on each of the Tenants on August 11, 2017. As a result, I find that the Tenants were duly served the Notice of Hearing on August 11, 2017, the date it was personally served on them.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

### Preliminary matters

At the outset of the hearing, the Landlord requested to withdraw their application for an Order of Possession as the Tenants vacated the rental unit on August 27, 2017. The Application is amended accordingly.

In the hearing the Landlord testified that the Tenants continued to occupy the rental unit until August 27, 2017, and requested to amend their application to include rent for August, 2017. The Landlord also requested to amend the application to include recovery of the \$100.00 filing fee. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. As a result, I find it reasonable to amend the application to include rent for August, 2017, and the recovery of the filing fee. The Application is amended accordingly.

The Landlord also requested to amend their Application to include the retention of the Tenant's security deposit to offset any monetary compensation owed by the Tenant to the Landlord as a result of this decision. Section 72(2) of the *Act* states that if the director orders a Tenant to pay any amount to a Landlord, the amount may be deducted from any security deposit or pet damage deposit held by the Landlord on behalf of the Tenant. As a result, I have amended the Application to include the retention of the security deposit, in order to offset any monetary compensation owed by the Tenant to the Landlord.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

### Background and Evidence

In the hearing the Landlord testified that they entered into a one-year fixed term tenancy with the Tenants on June 1, 2017, with an end date of June 1, 2018. The Landlord testified that the monthly rent was \$950.00, due on the first day of the month and that a security deposit in the amount of \$475.00 was paid by the Tenants on June 19, 2017, which they still hold. The landlord also submitted in the documentary evidence before me, a copy of a tenancy agreement matching the above terms.

The Landlord testified that on July 1, 2017, the Tenants did not pay the rent as required, and that as a result, a Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was issued.

The Landlord submitted a copy of the 10 Day Notice dated July 2, 2017, which indicates that the Tenants failed to pay rent in the amount of \$950.00, which was due on July 1, 2017. The 10 Day Notice has an effective vacancy date of July 10, 2017, and indicates that it was served on the Tenants on July 2, 2017, by e-mail. In the hearing the Landlord stated that in addition to sending the 10 Day Notice by e-mail, a copy was posted to the door of the rental unit on July 2, 2017, by their agent, and submitted in the documentary evidence before me a witnessed Proof of Service Notice to End Tenancy, indicating that the 10 Day Notice was served in the manner described above.

The Landlord testified that although there was an evacuation order in effect for the community in which the rental unit was located from July 16-July 27, 2017, the Tenants were still responsible to pay the rent when it was due on July 1, 2017. The Landlord testified that the Tenants returned to the rental unit after the evacuation order was lifted and did not vacate the unit until August 27, 2017. The landlord testified that on July 30, 2017, the Tenants paid partial rent in the amount of \$475.00 and that as of the date of the hearing, the Tenants owe \$1,425.00 in unpaid rent; \$475.00 for July, 2017, and \$950.00 for August, 2017.

### Analysis

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of the rent. When a Tenant does not pay rent when due, section 46 of the *Act* permits a Landlord to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants were served with the 10 Day Notice on July 5, 2017, three days after it was posted to the door of the rental unit.

Although there was an evacuation order in place for a portion of July, 2017, in the community in which the rental unit is located, rent for July, 2017, was due in full on

July 1, 2017, some time prior to the evacuation order. In any event, section 26 of the *Act* states that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *Act*, unless the Tenant has a right under the *Act* to deduct all or a portion of the rent.

Although a Tenant who is unable to use their rental unit for a period of time may be entitled to compensation for that loss, there is no evidence before me that the Tenants applied to the Branch seeking a reduction in their rent. As a result, I find that the Tenants were obligated to pay the monthly rent of \$950.00, on time and in full for July and August, 2017.

Pursuant to sections 67 and 72 of the *Act*, I find that the Landlord is entitled to monetary compensation in the amount of \$1,525.00; \$1,425.00 for unpaid rent and \$100.00 for the recovery of the filing fee.

Pursuant to section 72(2) of the *Act*, I also find that the Landlord is entitled to retain the \$475.00 security deposit paid by the Tenants in full, to offset the monetary compensation owed by the Tenants to the Landlord. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$1,050.00.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,050.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: September 15, 2017

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Residential Tenancy Branch