



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlords' 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 and 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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:11 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlords' agent (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 testified that the Landlords' Application for Dispute Resolution (the Application) and evidentiary package was sent to the tenant by way of registered mail on September 02, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application and evidentiary package on September 07, 2017, the fifth day after its registered mailing.

The landlord gave undisputed sworn testimony that a 10 Day Notice to End Tenancy (the 10 day Notice) was posted to the door of the rental unit on August 10, 2017. In accordance with sections 88 and 90 of the *Act*, I find the 10 Day Notice, identifying \$750.00 in rent owing for this tenancy, was deemed served to the tenant on August 13, 2017, three days after its posting.

At the outset of the hearing the landlord testified that the tenant vacated the rental unit on September 11, 2017. The landlord requested to withdraw their application for an Order of Possession. The landlords' application for an Order of Possession is withdrawn.

The landlord also requested to amend their application for a monetary award from \$3,000.00 to \$850.00, for August 2017 unpaid rent and recovery of the filing fee.

#### Issues(s) to be Decided

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

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

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

#### Background and Evidence

The landlord gave undisputed sworn testimony that they do not know when this tenancy began. The landlord also gave undisputed sworn testimony that the monthly rent was \$750.00, due on the first day of the month. The landlord testified that they continue to retain a \$375.00 security deposit in trust.

A copy of the signed 10 Day Notice, dated August 10, 2017, with an effective date of August 20, 2017, was included in the landlord's evidence.

#### Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlords comply with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

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 \$750.00, for unpaid rent owing for this tenancy for August 2017. As the landlords have been successful in this application, I also allow them to recover their \$100.00 filing fee from the tenant. Pursuant to section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

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

Item	Amount
Unpaid August 2017 Rent	\$750.00
Less Security Deposit	-375.00
Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$475.00</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: October 12, 2017

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Residential Tenancy Branch