



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OTBEC Property Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on October 13, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- 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,
- to recover the filing fee from the tenant for the cost of this application.

Two agents attended the hearing on behalf of the Landlord (the "Agents") and provided affirmed testimony. The tenant did not attend the hearing. The Agents testified that they sent the Notice of Hearing package by registered mail on August 31, 2017. I find the tenant is deemed to have received this package on September 5, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Agents stated that they no longer require an order of possession given that the tenant has now moved out. The Agents stated that they found the unit was abandoned part way through September of 2017. In consideration of this, I hereby amend the landlord's application accordingly.

The Agents were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Agent's provided documentary evidence which shows that there are two distinct written agreements as follows: one "Residential Tenancy Lease Agreement" for occupancy of the rental unit (\$695.00 per month), and one "Residential Lease Agreement" for furnishings and utilities (\$555.00 per month). I accept jurisdiction for the Residential Tenancy Lease Agreement. However, with respect to the latter agreement for furnishings and utilities, I find the rental of any furnishing (furniture or housewares etc.) falls outside the scope of the *Act*, and I decline jurisdiction on this matter. Further, as the rental of furnishings is intertwined with the utilities under one agreement, I also decline jurisdiction for the utilities part of this agreement, as I am unable to sufficiently distinguish these items.

The Agent's testified that they retained a furnishings and utilities deposit in the amount of \$277.50. They also stated that they collected a security deposit for occupancy of the unit in the amount of \$347.50. However, given my findings above, I also decline to consider the Agents' request to retain the deposit they collected with respect to the furnishings and utilities agreement. I will address the remainder of the application below. I suggest the Agents obtain legal advice on deposits held in trust for the furnishings and utilities.

### Issue(s) to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

### Background and Evidence

Documentary evidence, as per the Residential Tenancy Lease Agreement shows that the tenancy began on March 1, 2017, and that rent is due on the first of the month. The Agents testified that they currently hold a security deposit of \$347.50. The Agents also stated that they hold a key deposit in the amount of \$50.00.

The Agents stated that the tenant is supposed to pay \$1,250.00 per month (\$695.00 for rent and \$555.00 for furnishings and utilities as specified above). The Agents further stated that the tenant has been repeatedly late paying rent for the months of April – July

of 2017, and they are asking for 4x\$25.00 in compensation for this, as per the agreements signed by the tenant.

The Agents clarified in the hearing that the tenant owed \$219.35 at the end of July 2017. As per the ledger the Agent's submitted, this amount was comprised of \$100.00 in late rent fees for April – July 2017, as well as \$119.35 in unpaid rent and utilities/furnishings payments.

The Agents testified that the tenant has failed to pay any rent for August or September of 2017, and they provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice), which was posted to the tenant's door on August 4, 2017. As per the 10 Day Notice, the tenant owed \$1,469.35 at the time the notice was issued. The Agents testified that service of the 10 Day Notice was witnessed by a third party. The Agents testified that the tenant has not paid any money since the 10 Day Notice was issued.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

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 rent. There is insufficient evidence before me to conclude the tenant had a right to deduct all or a portion of the rent.

With respect to the Agents' request for a Monetary Order for unpaid rent, I turn to the amount in the ledger at the end of July 2017. The ledger indicates that \$119.35 of the \$219.35 owing at that time was from previous month where the tenant had not paid in full. However, based on the ledger, I find it unclear what amounts the tenant paid were for rent (occupancy), and what portion was for furnishings and utilities (which I have already declined jurisdiction on). The ledger only lists lump sum payments and it is difficult to discern what portion of this balance owing (\$119.35) was related to the actual rent, rather than for furnishings and utilities. As such, I will not consider this amount when determining the monetary order should be issued for.

I find it clear that the tenant has paid late for the months of April – July of 2017, and I find the Agents are entitled to \$100.00 in late rent fees for these 4 months of late rent, as specified in the tenancy agreement. As such, I will allow this portion of the amount

owing at the end of July. Also I find the evidence clearly establishes that the tenant did not pay any rent for August or September.

With respect to the tenant's accrued balance, I find as follows:

<b>Date</b>	<b>Item</b>	<b>Amount Due</b>	<b>Amount Paid</b>	<b>Accrued Balance Owing</b>
End of July 2017	Late rent fees	4x\$25.00		\$100.00
August 1, 2017	Rent Due	\$695.00	\$0.00	\$795.00
September 1, 2017	Rent Due	\$695.00	\$0.00	\$1490.00
<b>Total Accrued Balance</b>				<b>\$1490.00</b>

I find there is sufficient evidence before me to demonstrate that the tenant owes and has failed to pay \$1,490.00 in past due rent and late fees. Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Agents were substantially successful in this hearing, I also order the tenant to repay the \$100.00 fee paid to make the application for dispute resolution.

Further, the Agents requested that they be able to retain all deposits to offset the amount of rent owed.

Pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Agents in the amount of \$347.50 be kept and used to offset the amount still owed by the tenant. Also, pursuant to section 7 of the *Act*, the Agents may keep the key deposit of \$50.00. In summary, the Agents are entitled to a monetary order as follows:

<b>Item</b>	<b>Amount</b>
Accrued Balance (as above)	\$1,490.00
Filing Fee	\$100.00
<b>Less:</b>	

Security Deposit	(\$347.50)
Key Deposit	(\$50.00)
<b>Total Monetary Order</b>	<b>\$1,192.50</b>

### Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,192.50**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court. The Agents should obtain legal advice on dealing with the deposits held in trust for the furnishings and utilities.

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 18, 2017

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Residential Tenancy Branch