



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord, the tenant and the tenant's advocate (the advocate) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The advocate stated that she would be speaking on behalf of the tenant in this matter.

### Preliminary Matters

On September 21, 2017, the landlord submitted an Amendment to an Application for Dispute Resolution (the amendment) to the Residential Tenancy Branch (RTB) to request an additional monetary award for damages to the rental unit. The landlord provided a sworn affidavit that the tenant was personally served with the amendment on September 19, 2017.

Rule 3.14 of the Residential Tenancy Branch (RTB) Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the tenant did not receive the landlord's amendment in accordance with rule 3.14 of the RTB Rules of Procedure and may be prejudiced by this as the tenant did not have a chance to respond to the landlord's amendment. For this reason the landlord's amendment to request a monetary award for damages to the rental unit is dismissed, with leave to reapply.

During the course of the hearing it was established that the tenant gave possession of the rental back to the landlord on or around September 12, 2017, as a result of the 10

Day Notice. The landlord requested to withdraw their application for an Order of Possession.

The landlord's application for an Order of Possession is withdrawn.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (the Application) and evidentiary package which was personally served to the tenant on September 19, 2017. Pursuant to section 88 and 89 of the *Act*, I find the tenant has been duly served with these documents.

The tenant acknowledged receipt of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), identifying \$925.00 in unpaid rent owing for this tenancy. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord 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 January 07, 2017, with a monthly rent of \$925.00, due on the first day of each month. The landlord testified that they retain a security deposit in the amount of \$450.00, in trust.

A copy of the 10 Day Notice, dated September 02, 2017, with an effective date of September 12, 2017, was included in the landlord's evidence.

The landlord testified that they did not have any testimony add to the written evidence provided to the RTB.

The tenant testified that they owe \$925.00 in rent for September 2017.

#### 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*.

I find that, based on the landlord's written evidence and the sworn testimony of both parties, the landlord is entitled to a monetary award of \$925.00 for unpaid rent owing for this tenancy for September 2017.

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

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

The landlord testified that they do not know the tenant's present location and requested to serve the Monetary Order to the advocate's e-mail address as noted cover page of this decision. The advocate and the tenant agreed that they would accept this service.

Section 71 of the *Act* enables me to issue an order that a document may be served by substituted service in accordance with the order, despite the service provisions of sections 88 and 89 of the *Act*. Section 71(2) of the *Act* also enables me to make an order:

(b) that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I allow the landlord substituted service of the Monetary Order, by e-mail to the tenant's advocate at the e-mail address indicated on the cover page of this decision, which the tenant and the advocate have agreed to.

### Conclusion

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

Item	Amount
Unpaid Rent for September 2017	\$925.00

Filing Fee for this Application	100.00
Less security deposit	-450.00
<b>Total Monetary Order</b>	<b>\$575.00</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 is granted an order for substituted service. The landlord may serve the tenant the Monetary Order, along with a copy of this decision, to the advocate's e-mail address as set out above. I order that documents served in this manner have been sufficiently served to the tenant for the purposes of the *Act*, three days after the date that the email is sent by the landlord to the tenant's advocate.

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 10, 2017

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Residential Tenancy Branch