



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR MNSD 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:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord attended the hearing by way of conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on April 25, 2017 by way of registered mail to the forwarding address provided by the tenant on January 12, 2017. The landlord provided a Canada Post tracking the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on April 30, 2017, five days after its registered mailing.

The landlord testified in the hearing that the tenant had moved out on December 15, 2016, and no longer required an Order of Possession. The landlord withdrew her application for an Order of Possession for Unpaid Rent.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover their filing fee for this application?

### **Background and Evidence**

The landlord testified regarding the following facts. This fixed-term tenancy began on February 27, 2016, with monthly rent in the amount of \$1,595.00 payable on the 27th day of each month. The landlord holds a security deposit in the amount of \$800.00 for this tenancy. The tenant moved out on December 15, 2016 after receiving a 10 Day Notice to End Tenancy for Unpaid Rent from the landlord on December 1, 2016.

The landlord testified that the tenant owes \$795.00 in outstanding rent for October 27, 2016 to November 26, 2016, and the full rent for November 27, 2016 to December 26, 2016. The total outstanding rent is \$2,390.00. The landlord is seeking a monetary order for the unpaid rent, as well as recovery of the filing fee.

### **Analysis**

**Section 26** of the Act, in part, states as follows:

#### ***Rules about payment and non-payment of rent***

**26 (1)** *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent totalling \$2,390.00 for this tenancy. Accordingly I find that the landlord is entitled to \$2,390.00 in unpaid rent for this tenancy.

The landlord continues to hold the tenant's security deposit of \$800.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

### **Conclusion**

The landlord withdrew her application for an Order of Possession as the tenant had moved out.

I issue a \$1,690.00 Monetary Order in favour of the landlord, which allows the landlord to recover the unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: October 4, 2017

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Residential Tenancy Branch