



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

On August 24, 2017 the Landlord made an Application for Dispute Resolution by Direct Request (the "Application") requesting an Order of Possession and a Monetary Order for unpaid rent. This process involves a non-participatory hearing based on an undisputed notice to end tenancy for unpaid rent and documentary evidence.

The Application was considered by an Adjudicator on September 25, 2017. In an Interim decision rendered on the same date, the Adjudicator found the Landlord had served the Notice of Direct Request Proceeding documents to the Tenant by registered mail on January 11, 2016 which were deemed to have been received by the Tenant on August 30, 2017 pursuant to Section 89 and 90 of the *Residential Tenancy Act* (the "Act").

However, the Adjudicator also determined that the Application could not proceed by way of a non-participatory hearing as the Landlord had failed to provide information about rent payment, or lack thereof, between the time the Tenant had been served with the notice to end tenancy for unpaid rent and the time the Application was filed. As a result, that Adjudicator adjourned the matter to reconvene in this participatory hearing.

Two agents for the company Landlord appeared for the hearing and provided affirmed testimony and referred to documentary evidence which had been provided with the Application. However, there was no appearance by the Tenant during the 16 minute hearing or any submission of written evidence prior to the hearing.

### Preliminary Matters

The Landlord's agents withdrew their Application for an Order of Possession because the Tenant had vacated the rental unit and the tenancy had ended.

The Landlord's agents also requested to retain the Tenant's security deposit and recover the filing fee for the cost of the Application. As the Direct Request process was adjourned to a participatory hearing, I find the Landlord is now entitled to make these claims and I amend the Application pursuant to Section 64(3) (c) of the Act.

The Landlord also wanted to increase the monetary claim to include unpaid rent for August 2017 which was unpaid by the Tenant. Therefore, pursuant to Section 64(3) (c) of the Act and Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I amended the Landlord's Application to increase the amount of unpaid rent to \$3,490.00.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

#### Background and Evidence

The Landlord's agents testified that this tenancy started on February 15, 2017 for a fixed term of one year. The Tenant paid the Landlord a security deposit of \$872.50 at the start of the tenancy which the Landlord still retains in trust. The Landlord testified that rent was payable in the amount of \$1,745.00 on the first day of each month.

The Landlord testified that the Tenant failed to pay rent for June 2017. As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on June 6, 2017 by posting it to the rental unit door. This method of service was verified by a witness who signed a Proof of Service document.

The Landlord's agents testified that while the Tenant paid July 2017 rent, he failed to pay June and August 2017 rent and therefore seeks a Monetary Order to recover two months' rent in the amount of \$3,490.00.

#### Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence before me in this Decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act.

In relation to the Landlord's monetary claim for unpaid rent, I accept the Landlord's undisputed oral and written evidence that the Tenant failed to pay rent for June and August 2017 in the amount of \$3,490.00. Therefore, this amount is hereby awarded to the Landlord.

As the Landlord has been successful in this claim, I also award the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$3,590.00.

As the Landlord holds the Tenant's security deposit of \$872.50, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$2,717.50.

This order must be served on the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment. Copies of this order for service and enforcement are attached to the Landlord's copy of this Decision.

### Conclusion

The Tenant has breached the Act by failing to pay rent. Therefore, the Landlord is allowed to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$2,717.50. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 08, 2017

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Residential Tenancy Branch