



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF, O

### 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 sections 46 and 55;
- a monetary order for unpaid rent and for money owed or 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 landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Application for Dispute Resolution (the Application) and evidentiary package were sent by registered mail to the tenant on September 28, 2017. The tenant confirmed this service. In accordance with sections 88 and 89, I find the tenant was duly served with the Application and evidentiary package.

The landlord provided written evidence that a 10 Day Notice to End Tenancy (the 10 day Notice) was sent by registered mail to the tenant on August 17, 2017. In accordance with sections 88 and 90 of the *Act*, I find the 10 Day Notice, identifying \$689.00 in rent owing for this tenancy, was deemed served to the tenant on August 22, 2017, five days after its mailing.

At the outset of the hearing the landlord testified that the tenant vacated the rental unit. The landlord requested to withdraw their application for an Order of Possession.

The tenant confirmed that they vacated the rental unit on December 04, 2017.

The landlords' application for an Order of Possession is withdrawn.

The landlord also requested to amend their monetary claim from \$1,403.25 to \$2,142.75 to reflect the tenant's failure to pay \$714.21 in monthly rent for October 2017, November 2017 and December 2017, the additional months of unpaid rent waiting for this hearing.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

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

#### Background and Evidence

The landlord provided written evidence that this tenancy began on March 08, 2008, with a current monthly rent of \$714.21 effective as of September 01, 2017, due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$300.00.

The tenant provided written evidence that the monthly rent was paid for August 2017 and September 2017.

The landlord confirmed that the tenant paid the monthly rent for August 2017 and September 2017. The tenant testified that the tenant did not pay the monthly rent for

October 2017, November 2017 and December 2017. The landlord stated that the tenant moved out of the rental unit in December 2017. The landlord testified that the tenant owes \$2,142.75 for unpaid rent for October 2017, November 2017 and December 2017.

The tenant testified that she needed money for a security deposit at a new rental unit which took her two months to find.

### Analysis

I find that I will allow the amendment requested by the landlord as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application which I have already found was duly served to the tenant.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord 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.

Based on the undisputed written evidence and affirmed testimony, I find that the landlord is entitled to a monetary award of \$2,142.75, for unpaid rent owing for this tenancy for October 2017, November 2017 and December 2017.

Pursuant to 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.

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

### Conclusion

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

<b>Item</b>	<b>Amount</b>
Unpaid October 2017 Rent	\$714.25
Unpaid November 2017 Rent	714.25
Unpaid December 2017 Rent	714.25
Less Security Deposit	-300.00
Filing fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,942.75</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.

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: December 15, 2017

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Residential Tenancy Branch