



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPC MND MNR FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for an order of possession based on an undisputed 1 Month Notice for Cause ("1 Month Notice"), for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and original documentary evidence were served on the tenant personally November 5, 2017 at the rental unit address between 5:30 p.m. and 6:00 p.m. The landlord testified that the tenant accepted the package from the landlord and eventually vacated the rental unit on November 16, 2017 and has not provided a written forwarding address to the landlord. Based on the undisputed testimony of the landlord, I accept that the tenant was served on November 5, 2017 with the Notice of Hearing, application and original documentary evidence package. I have not considered the second documentary evidence package as the landlord confirmed that it was not served on the tenant.

### Preliminary and Procedural Matters

The landlord provided her email address at the outset of the hearing which was confirmed by the undersigned arbitrator. The landlord confirmed her understanding that the decision would be emailed to her and that any applicable orders would be included. As the tenant did not attend the hearing, the tenant's copy of the decision will be sent by regular mail.

At the outset of the hearing, the landlord also confirmed that the tenant vacated the rental unit on November 16, 2017 and as a result, the landlord is no longer seeking an order of possession. The landlord confirmed; however, that if she is entitled to the loss of the November 2017 rent, she would be seeking that cost. I note that the landlord accounted for that loss of rent in her application and find that the landlord's total claim is \$800.00 for unpaid October 2017 rent

and \$800.00 for loss of November 2017 rent for a total monetary claim of \$1,600.00. I find that the tenant would not be prejudiced by the increase from the application amount listed as \$1,200.00 to \$1,600.00 as the tenant would know or ought to have known that by overholding in the rental unit until November 16, 2017 that the landlord would be seeking loss of November 2017 rent. As a result, I permit the claim to be \$1,600.00 pursuant to section 64(3) of the *Act*.

Regarding the landlord's claim for damages, I find that portion is premature as the tenant was still residing in the rental unit when the landlord filed her application and as a result, **I dismiss the landlord's claim for damages with leave to reapply.**

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A month to month tenancy began on October 1, 2014. The landlord stated that the tenant vacated the rental unit on November 16, 2017 and was overholding beyond the effective vacancy date listed on the 1 Month Notice which was September 30, 2017. Monthly rent during the tenancy was \$800.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that the tenant failed to pay \$800.00 for October 2017 rent and that the landlord has suffered a loss of rent of \$800.00 for November 2017 as the tenant was overholding the rental unit until vacating on November 16, 2017. The landlord verbally requested to retain the tenant's security deposit if she was so entitled to unpaid rent and loss of rent.

The landlord testified that she did not serve the 1 Month Notice dated August 31, 2017 until September 1, 2017 and that she personally served the tenant. The landlord stated that the tenant did not dispute the 1 Month Notice.

#### Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As I have accepted that the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence

supports the landlord's claim and is reasonable. I also find the tenant breached section 26 of the *Act* which states in part:

**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.

[My emphasis added]

In the matter before me, as the tenant did not dispute the 1 Month Notice, I find the tenancy ended on the corrected effective date of the 1 Month Notice which automatically corrects to October 31, 2017 as the landlord testified that she did not serve the 1 Month Notice until September 1, 2017. Section 53 of the *Act* automatically corrected the September 30, 2017 effective date to October 31, 2017. Therefore, I find the tenancy ended on October 31, 2017 and that the tenant was overholding the rental unit until November 16, 2017. Therefore, I find the tenant owes the landlord **\$800.00** for unpaid October 2017 rent, and **\$800.00** for the landlord's loss of November 2017 rent.

In addition, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was fully successful. Based on the above, I find the landlord has established a total monetary claim of **\$1,700.00** comprised of \$800.00 in unpaid rent, \$800.00 in loss of rent, plus the \$100.00 recovery of the cost of the filing fee.

As the landlord continues to hold the tenant's \$400.00 security deposit and pursuant to sections 38 and 72 of the *Act*, **I authorize** the landlord to retain the tenant's full security deposit of \$400.00 which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,300.00**.

**I caution** the tenant to comply with section 26 of the *Act* in the future.

Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain the tenant's full security deposit of \$400.00 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,300.00. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The landlord is at liberty to reapply for damages as indicated above as the landlord's claim for damages was premature at the time of this application.

This decision does not extend any applicable timelines under the *Act*.

The tenant has been cautioned to comply with section 26 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 17, 2018

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Residential Tenancy Branch