



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORPORATION  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes: 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:

- 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 .

TS appeared as agent for the landlord, and had full authority to do so. Both parties 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 tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with copies of the landlord's application and evidence. The tenant did not submit any written evidence for this hearing.

### Preliminary Issue - Adjournment of Hearing

At the outset of the hearing, the tenant requested an adjournment of the hearing. The landlord was ready to proceed, and was opposed to the adjournment as both parties had five months to prepare for the hearing.

During the hearing, I advised both parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- o the oral or written submissions of the parties;*
- o the likelihood of the adjournment resulting in a resolution;*
- o the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- o whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- o the possible prejudice to each party.*

In reaching my decision, I find the tenant failed to provide sufficient reasons for why an adjournment was necessary considering both parties had over 5 months to prepare for this hearing. I find an adjournment would be prejudicial to the applicant, who attended the hearing, and was ready to proceed. Accordingly, the tenant's application to adjourn was not granted.

#### 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

This month-to-month tenancy began on January 1, 2016, with monthly rent in the amount of \$1,550.50. The landlord holds a security deposit in the amount of \$750.00 for this tenancy. The tenant moved out on May 31, 2017, and provided a forwarding address to the landlord on May 26, 2017. Both parties confirmed in the hearing that the tenant consented to the landlord retaining \$25.00 of the security deposit for the cleaning fee.

The landlord is seeking a monetary order for the unpaid rent for May 2017. The tenant admitted in the hearing that she withheld the rent for May 2017 as the hydro bill was "astronomical" due to an unresolved heating issue that existed since the day the tenant moved in.

### 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 that the tenant failed to pay the outstanding rent totalling \$1550.50 for this tenancy. The tenant did not have an order from an Arbitrator allowing her to deduct or withhold any portion of the rent, nor did the landlord consent to the tenant's non-payment of rent. Accordingly I find that the landlord is entitled to \$1,550.50 in unpaid rent for this tenancy. As the tenant consented to the \$25.00 cleaning fee, I find that the landlord is entitled to \$25.00 in satisfaction of the cleaning fee.

The landlord continues to hold the tenant's security deposit of \$750.00. 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

I issue a Monetary Order in the amount of \$925.50 in the landlord's favour under the following terms which allows the landlord to retain the security deposit in satisfaction of the monetary claim for unpaid rent, the \$25.00 cleaning fee, plus recover the \$100.00 filing fee for this application.

Item	Amount
Unpaid rent for May 2017	\$1,550.50
Cleaning Fee	25.00
Filing Fee	100.00
Less Security Deposit	-750.00
Total Monetary Order	\$925.50

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: January 4, 2018

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Residential Tenancy Branch