



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR OPC MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on March 15, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a 1 Month Notice to End Tenancy for Cause;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord stated that she sent a copy of the Application for Dispute Resolution along with supporting documentary evidence to the rental unit by registered mail on January 30, 2018. I find the Tenant received this package on February 4, 2018, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

Further the Landlord filed an amendment to request an order of possession based on a 10 Day Notice to End Tenancy, and to recover the unpaid rent from the Tenant. The Landlord sent this amendment to the Tenant by registered mail on February 22, 2018. Pursuant to section 90 of the *Act*, I find the Tenant received this package on February 27, 2018, the fifth day after it was mailed.

The Landlord testified that the Tenant moved out of the rental unit on March 3, 2018, and she no longer requires an order of possession. I have amended the Landlord's application accordingly and will only be considering the Landlord's request to recover unpaid rent.

Further, the Landlord requested to amend her application to allow her to retain the security deposit to offset rent owed. I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

#### Background and Evidence

The Landlord testified that monthly rent is \$1,400.00, and is due on the 15<sup>th</sup> of the month. The Landlord stated that she currently holds a security deposit in the amount of \$700.00 and a pet deposit in the amount of \$350.00. The Landlord stated that, as per the tenancy agreement, the Tenant was supposed to pay a pet deposit of \$700.00 but she only ever paid \$350.00.

The Landlord stated that she never received any rent from the Tenant for the last two months and the Tenant owes \$2,800.00 in rent. The Landlord stated that she never received any rent payment for the period of January 15, 2018, to February 14, 2018. The Landlord also stated that she never received any rent payment for the period of February 15, 2018, to March 14, 2018. The Landlord stated that she believes the Tenant moved out on March 3, 2018.

#### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's undisputed testimony before me to demonstrate that the tenant owes and has failed to pay \$2,800.00 in rent for February and March of 2018, as specified above.

The Landlord requested that they be able to retain the security deposit of \$1,050.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the Tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent as above	\$2,800.00
Other:	
Filing fee	\$100.00
<b>Less:</b>	
Security Deposit currently held by Landlord	(\$1,050.00)
<b>TOTAL:</b>	<b>\$1,850.00</b>

#### Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,850.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: March 16, 2018

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Residential Tenancy Branch