



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on October 18, 2018. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the filing fee from the tenants for the cost of this application.

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

The Landlord testified that the Tenant moved out of the rental unit part way through October 2018. The Landlord further testified that before the Tenant moved out, she personally served the Tenant with her application and evidence on September 8, 2018. I find the Tenant received the package on this day.

The Landlord stated that she no longer requires an order of possession, given that the Tenant moved out, and she requested that her application be amended to reflect this. In consideration this, 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 \$1,000.00 and is due on the first of the month. The Landlord testified that she currently holds a security deposit of \$500.00. The Landlord stated that the Tenant was \$400.00 short on her rent payment for August 2018, and also \$400.00 short on rent for September 2018. The Landlord stated that the Tenant failed to pay any money for October 2018 rent, and now owes \$1,800.00 in total for rent.

The Landlord stated that the Tenant moved out around October 4 or 5, 2018, and left the key in the mailbox. The Landlord stated that the Tenant left the unit full of garbage and significantly damaged. The Landlord stated that they are still repairing and cleaning the unit, weeks later.

The Landlord testified that she served the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) in person (witnessed by a third party) to the tenant on August 27, 2018. At that time, there was only \$400.00 owing. However, now there is \$1,800.00.

### Analysis

Based on the unchallenged testimony, 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 agent's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from her undisputed evidence and testimony before me to demonstrate that the tenant owes and has failed to pay \$1,800.00 in rent, which includes rent up until the end of October 2018. Since the Tenant left unannounced part way through October 2018, and left the unit full of garbage and damaged, I find the Tenant is responsible for rent for this month, as the unit was not re-rentable at the time the Tenant left.

The Landlord requested that they be able to retain the security deposit of \$500.00 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 tenants. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Unpaid rent	\$1,800.00
Filing fee	\$100.00
<b>Less:</b>	
Security Deposit currently held by Landlord	(\$500.00)
<b>TOTAL:</b>	<b>\$1,400.00</b>

### Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,400.00** comprised of rent owed. 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: October 19, 2018

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Residential Tenancy Branch