



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL-S, FFL

### 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 section 55; and
- a monetary order for unpaid rent pursuant to section 67;
- 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
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant CV and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, tenant CV confirmed that he had received the landlord's evidence. Tenant CV testified that he did not provide any documentary evidence for this hearing. As the tenant did not raise any issues regarding service of the application or the evidence, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Amendment of Landlord's Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include October and November unpaid rent of \$1,750.00 total. I find that the tenants should reasonably have known that the landlord would suffer this loss of income if they did not pay the rent or vacate the rental unit to allow it to be re-

rented. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for October and November 2018 unpaid rent of \$1,750.00 total.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

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

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

The parties testified that the tenancy began on March 1, 2017 on a fixed term until March 1, 2018 at which time the tenancy continued on a month to month basis. As per the submitted tenancy agreement and testimony of the parties, the parties entered into a new written tenancy agreement on September 1, 2018. Rent in the amount of \$437.50 became payable on the first and fifteenth of each month, for a total of \$875.00. The tenants remitted a security deposit in the amount of \$437.50 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

Tenant CV confirms personal receipt of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") dated September 10, 2018. The notice indicates an effective move-out-date of September 20, 2018.

The landlord seeks a monetary order of \$2,325.00 for unpaid rent from September to November 2018. The landlord claims that the tenants have paid a total of \$300.00 in rent for the above three months. Tenant CV confirms rent is owed in the amounts described by the landlord.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. As the tenants did not pay the overdue rent or file an application to dispute the notice within five days, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first and fifteenth day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$875.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from September to November 2018. Therefore, I find that the landlord is entitled to \$2,325.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$437.50 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,887.50. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,987.50.

### Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$1,987.50.

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: November 15, 2018

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Residential Tenancy Branch