



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR FFL

### Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open during the duration of the hearing to allow the parties to call in. The landlord appeared and with the assistance of their family member was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses

The landlord testified that they served a 10 Day Notice to End Tenancy for Unpaid Rent on September 7, 2018 by posting on the rental unit door. The landlord testified that they served the Notice of Direct Request proceeding by registered mail sent to the tenant on October 1, 2018. The landlord testified that they served the interim decision and Notice of Hearing on the tenant by registered mail sent on October 6, 2018. The landlord provided witnessed Proof of Service forms and Canada Post tracking numbers as evidence in support of service. Based on the undisputed evidence I find that all of the materials were deemed served on the tenant in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord testified that the tenant has vacated the rental unit and withdrew the portion of their application seeking an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy began in November, 2017. The monthly rent was \$1,600.00 payable on the first of each month. A security deposit of \$800.00 was collected and has been returned in full to the tenant.

The landlord testified that there was a rental arrear of \$3,800.00 as at September 7, 2018, the date of the 10 Day Notice. The landlord said that the tenant did not make any payment against the arrear and failed to pay the October, 2018 rent. The landlord submits that the rental arrear as at the date of the hearing, November 16, 2018 is \$5,400.00.

The landlord testified that in order to induce the tenant to vacate the rental suite they chose to pay the tenant's moving costs, paid double the amount of the security deposit and otherwise accommodated the tenant. The landlord seeks a monetary award for the return of the payments issued to the tenant.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,600.00. I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$5,400.00. Accordingly, I issue a monetary award for unpaid rent owing of

\$5,400.00 as at November 16, 2018, the date of the hearing, pursuant to section 67 of the *Act*.

I find there is insufficient evidence in support of the remaining portion of the landlord's claim. I find that the payments the landlord submits they made to the tenant to induce them to vacate the rental unit are voluntary payments. They are not losses that were incurred due to the violation of the tenant and the landlord was under no obligation to make these payments. I find that there is no basis by which the landlord is empowered to claim a return of payments voluntarily made. Consequently, I dismiss this portion of the landlord's application.

As the landlord was not wholly successful in their application I allow the landlord to recover a portion of the filing fee in the amount of \$50.00.

### Conclusion

I issue a monetary award in the amount of \$5,450.00 in the landlord's favour. The tenant must be served with this Order. Should the tenant 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: November 16, 2018

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Residential Tenancy Branch