



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DOLE ENTERPRISES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR-S, MNDC-S, FF

### 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;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The landlord's agent, D.S. (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenant, D.L.E. attended the hearing via conference call and provided affirmed testimony. The tenant, D.A.E. did not attend. Neither tenants provided any documentary evidence. The landlord provided undisputed affirmed testimony that each of the tenants were served with the Notice of Hearing Package and the first 5 pages (out of 10 pages) of the landlord's submitted documentary evidence in person on February 15, 2019 as they were both vacating the rental unit. The tenant, D.L.E. confirmed receipt of this package as claimed by the landlord. The landlord also stated that the remaining 5 pages were served to each of the tenants to the provided mailing address via Canada Post Registered Mail on February 25, 2019. The tenant, D.L.E. stated that she did not receive this package as the mailing address was that of her partner's friend and neither resided there anymore. The tenant, D.L.E. confirmed no new mailing address was provided to the landlord. The

landlord submitted a copy of the Canada Post Customer Receipt Tracking Label, date stamped February 25, 2019 and confirmed that the packages were returned by Canada Post as "moved". I accept the undisputed evidence of the landlord and find that all parties have been properly served as per sections 88 and 89 of the Act. Although the tenant, D.A.E. did not attend and neither tenant received the remaining 5 pages of submitted documentary evidence, I find that both tenants are deemed served as per section 90 of the Act as neither tenant provided an updated mailing address to the landlord after the end of tenancy.

At the end of the hearing the tenant, D.L.E. stated she is of no fixed address, but did receive mail at her mother's residence. As such, the tenant, D.L.E. provided this address to receive a copy of this decision.

At the outset, both parties confirmed that the tenancy ended on February 15, 2019 when both the tenants vacated the rental unit. The landlord stated as such that an order of possession was no longer required. As such, no further action is required for this portion of the application.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 21, 2018 on a fixed term tenancy ending on December 31, 2019 and then thereafter on a month-to-month basis as per the signed tenancy agreement dated December 19, 2018. The monthly rent was \$935.00 payable on the 1<sup>st</sup> day of each month. Monthly parking is \$15.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$467.50 was paid on December 19, 2018.

The landlord stated that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 5, 2019 on February 5, 2019 in person with a witness. The 10 Day Notice sets out that the tenants failed to pay rent of

\$950.00 that was due on February 5, 2019 and provides for an effective end of tenancy date of February 15, 2019.

The landlord clarified that a monetary claim of \$975.00 consists of \$950.00 in unpaid rent (February 2019) and a \$25.00 NSF Charge is sought.

The landlord also provided details that in the signed tenancy agreement in section 12. Rent Arrears it states in part that an administration fee of up to \$25.00 for a late rent payment, returned or NSF cheque plus any service fees charged may sought by the landlord.

In support of these claims, the landlord has provided copies of:

- Returned Item (Rent Cheque) dated February 1, 2019
- 10 Day Notice dated February 5, 2019
- Signed and dated Tenancy Agreement
- Completed Condition Inspection Report for Move-In/Move-Out
- Witness statement for proof of service of 10 Day Notice

The tenant, D.L.E. stated that no rent was paid for February 2019 and that she was not disputing that the rent cheque was returned by the bank as "NSF".

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In this case, the landlord has provided undisputed evidence that the tenants failed to pay rent of \$950.00 for February 2019 and that the rent cheque was returned as "NSF" allowing the landlord to seek a \$25.00 charge as per the signed tenancy agreement. This was supported by the copies of the submitted 10 Day Notice dated February 5, 2019, the signed tenancy agreement dated December 19, 2018 and the Returned Item

(Cheque) dated February 1, 2019 for \$950.00 as well as the tenant, D.L.E.'s direct testimony. The landlord has established a total monetary claim of \$975.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I also authorize the landlord to retain the \$467.50 security deposit in partial satisfaction of this claim.

### Conclusion

The landlord is granted a monetary order for \$582.50.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the 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: March 25, 2019

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Residential Tenancy Branch