



# 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 sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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.

The tenant did not attend this hearing, although I waited until 11:11 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m.

The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Agent J.G. (the landlord) indicated that they would be the primary speaker for the landlord.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

**Commencement of the Hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that the Application for Dispute Resolution (the Application) and evidentiary package were sent to the tenant by way of registered mail on January 28, 2019. The landlord provided a copy of the Canada Post Tracking Number to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find

that the tenant was deemed served with the Application and evidentiary package on February 02, 2019, the fifth day after their registered mailing.

At the outset of the hearing the landlord submitted that the tenant has moved out of the rental unit as of February 25, 2019, and that the landlord now has possession of the rental unit. The landlord requested to withdraw their request for an Order of Possession.

I have amended the Application to withdraw the landlord's request for an Order of Possession pursuant to section 64 of the Act.

At the outset of the hearing the landlord also requested to amend the monetary amount from \$4,100.00 to \$5,350.00 to account for February 2019 unpaid rent in the amount of \$1,250.00.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I allow this amendment to the Application as rent for February 2019 was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

#### Issues(s) to be Decided

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order?

Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The landlord gave undisputed testimony that this tenancy began on October 01, 2018, with a current monthly rent of \$1,250.00, which is due on the first day of each month. The landlord testified that they retain a security deposit was in the amount of \$625.00.

A copy of the signed 10 Day Notice dated December 09, 2018, identifying \$2,850.00 in unpaid rent owing for this tenancy with an effective date of December 20, 2018, was included in the landlord's evidence.

The landlord also provided a Monetary Order Worksheet showing the rent owing and paid during this tenancy.

The landlord gave undisputed affirmed testimony that the tenant has not paid any amount since receiving the 10 Day Notice.

The landlord submitted that they are seeking a monetary award in the amount of \$5,350.00 for the unpaid rent owing from October 2018 to February 2019.

### Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

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.

Based on the landlord's undisputed written evidence and affirmed testimony, I find that the landlord is entitled to a monetary award of \$5,350.00 for unpaid rent owing from October 2018 to February 2019.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee for the Application:

| <b>Item</b>                     | <b>Amount</b>     |
|---------------------------------|-------------------|
| Unpaid October 2018 Rent        | \$350.00          |
| Unpaid November 2018 Rent       | 1,250.00          |
| Unpaid December 2018 Rent       | 1,250.00          |
| Unpaid January 2019 Rent        | 1,250.00          |
| Unpaid February 2019 Rent       | 1,250.00          |
| Less Security Deposit           | -625.00           |
| Filing Fee for this Application | 100.00            |
| <b>Total Monetary Order</b>     | <b>\$4,825.00</b> |

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 11, 2019

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Residential Tenancy Branch