



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR FF / CNR MT MNDC OLC ERP RP LAT

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- more time to make an application to cancel the landlord’s 10 Day Notice pursuant to section 66;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution.

### Preliminary Issue – Scope of Application

At the outset of the hearing, the landlord advised that the tenant has vacated the rental unit as of April 3, 2019; therefore, the landlord no longer requires an order of possession.

As the tenancy has ended, the tenant's entire application with the exception of her claim for monetary compensation for loss is now moot and therefore dismissed without leave to reapply.

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. As the tenant's application for monetary compensation is not related to the landlord's application for unpaid rent, I am exercising my discretion to dismiss this portion of the tenants' application with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

The landlord also appeared to be seeking monetary compensation for damage(s) and/or loss but the landlord did not file any amendment seeking such. The parties were advised that they were both at liberty to reapply for their respective monetary loss claims and these could potentially be heard as a cross-application on a future date.

The hearing proceeded on the merits of the landlord's monetary claim for unpaid rent only.

### Issues

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

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

### Background and Evidence

The tenancy began on September 1, 2017 with a monthly rent of \$2500.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$1250.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay the \$2500.00 rent payable on March 1, 2019. The tenant acknowledged rent for March 2019 was not paid.

### Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant was obligated to pay monthly rent in the amount of \$2500.00 but failed to pay rent for March 2019. The tenant did not have a right under the Act to deduct or withhold this rent. I accept the landlord's claim for outstanding rent of \$2500.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2600.00.

Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the \$1250.00 security deposit in partial satisfaction of the monetary award. Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1350.00.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1350.00. 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: April 09, 2019

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Residential Tenancy Branch