



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPRM-DR, OPR-DR, 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 or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference for this hearing.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ('Application') and evidence by way of registered mail on October 26, 2020. The landlord provided the tracking information in the hearing. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the Application and evidence on October 31, 2020, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice on October 6, 2020 by way of registered mail. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88 and 90 of the *Act*, I find the 10 Day Notice deemed served on October 11, 2020, 5 days after mailing.

The landlord testified that the tenant had moved out after the landlord had obtained an Order of Possession following a previous hearing. As the tenancy has ended, the landlord withdrew his application for an Order of Possession.

Although the landlord applied for a Monetary Order of \$2,600.00 in their initial claim, the tenant has failed to pay rent for the months of September 2020 through to November 2020. Since the filing of this application, another \$5,200.00 in rent has become owing that was not included in the original application. I have accepted the landlord's request to amend their original application from \$2,600.00 to \$7,800.00 (plus \$100.00 filing fee) to reflect the additional unpaid rent that became owing by the time this hearing was convened.

### **Issues to be Decided**

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

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

### **Background and Evidence**

This month-to-month tenancy began on December 1, 2018, with monthly rent set at \$2,600.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,300.00, which the landlord still holds. The tenant moved out sometime after the landlord obtained an Order of Possession following a previous hearing held on November 9, 2020.

The landlord is seeking a monetary order for unpaid rent for the months of September 2020 through to November 2020. The landlord testified that the tenant had moved out without paying the outstanding rent for these months.

### **Analysis**

Section 26 of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) 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.

The landlord provided undisputed evidence that the tenant failed to pay any monthly rent for the months of September 2020 through to November 2020. Therefore, I find that the landlord is entitled to \$7,800.00 in outstanding rent for these months.

The landlord continues to hold the tenant's security deposit of \$1,300.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

### **Conclusion**

I issue a \$6,600.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for September 2020	\$2,600.00
Unpaid Rent for October 2020	2,600.00
Unpaid Rent for November 2020	2,600.00
Recovery of Filing Fee for this Application	100.00
Security Deposit	-1,300.00
<b>Total Monetary Order</b>	<b>\$6,600.00</b>

The tenant must be served with this Order as soon as possible. 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: January 12, 2021

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Residential Tenancy Branch