



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** OPR-DR, MNR-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 for this application, pursuant to section 72 .

While the landlord ("landlord") attended the hearing by way of conference call, the tenant did not. I waited until 11:10 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord's agent was given a full opportunity to be heard, to present affirmed 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.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on November 24, 2021 by way of registered mail. The landlord provided a tracking number in their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on November 29, 2021, five days after its registered mailing. The tenant did not submit any evidence for this hearing.

The landlord confirmed in the hearing that the tenant had moved out on or about January 5, 2022, and that they no longer require an Order of Possession. Accordingly, the hearing proceeded with the landlord's monetary claims only.

Although the landlord had applied for a monetary Order of \$2,750.00 in their initial claim, since they applied another \$5,560.00 in rent had become owing that was not

included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$2,750.00 to \$8,310.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

**Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent?

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

**Background and Evidence**

The landlord testified regarding the following facts. This fixed-term tenancy began on June 1, 2021 and ended sometime around January 5, 2022 after the tenant was served with a 10 Day Notice for Unpaid Rent on September 2, 2021. Monthly rent is set at \$1,390.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$670.00, which the landlord still holds.

The landlord filed an application for a monetary order for unpaid rent and an Order of Possession on September 27, 2021, after the tenant failed to move out, or pay the remaining balance.

The landlord testified that the tenant failed to pay the rent for the months of October 2021 through to January 2022, and moved out some time in January 2022.

The landlord is seeking a monetary order for the unpaid rent ,and recovery of the filing fee.

**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 \$8,310.00 in outstanding rent for this tenancy. On this basis, I allow the landlord to recover the unpaid rent. I also allow the landlord to recover the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$670.00. 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.

### **Conclusion**

The landlord's application for an Order of Possession was cancelled as the tenant had moved out.

I allow the landlord's monetary claim as set out in the table below. 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.

Unpaid Rent	\$8,310.00
Filing Fee	100.00
Less Security Deposit Held	-670.00
<b>Total Monetary Order</b>	<b>\$7,740.00</b>

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 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 17, 2022

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Residential Tenancy Branch