



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR-DR-PP, 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.

JT represented the landlord in this hearing, while the tenants attended with their advocate. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed that this tenancy ended on January 24, 2022, and the landlord no longer requires an Order of Possession. Accordingly, the hearing proceeded with the landlord's monetary claims only.

The tenants confirmed receipt of the landlord's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the landlord's application and evidence. The tenants did not submit any written evidence for this hearing.

Although the landlord had applied for a monetary Order of \$6,638.47 in their initial claim, since they applied another \$2,550.00 for January 2022 rent has become owing

that was not included in the original application. The landlord confirmed that the tenants had made a payment of \$1,700.00 towards the outstanding balance. 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 to include the additional unpaid rent that became owing by the time this hearing was convened.

### **Issues(s) to be Decided**

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

Is the landlord entitled to recover the filing fee?

### **Background and Evidence**

This month-to-month tenancy began on February 1, 2019, with monthly rent set at \$2,500.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,275.00, which the landlord still holds.

The tenants moved out on January 24, 2022 after they were served with a 10 Day Notice to End Tenancy for Unpaid Rent on November 30, 2021. The landlord testified that although the tenants made one payment of \$1,700.00 since the issuance of the 10 Day Notice, they have failed to make further payments, including rent payment for January 2022. The landlord provided a breakdown of the payments and balances up to December 4, 2021, which shows payment of \$700.00 on December 3, 2021, and a payment of \$1,000.00 on December 4, 2021, for an outstanding balance of \$6,638.47. The landlord is seeking a monetary order for the unpaid rent, as well as recovery of the filing fee.

The tenants do not dispute that they have not paid the landlord the outstanding rent. The tenants testified that there were numerous issues with the tenancy, although they had yet to file an application for dispute resolution at the time of the hearing. The tenants also testified that they were unable to pay a lump sum at this time towards the outstanding balance.

### **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 at this hearing that the tenants have moved out having only paid \$1,700.00 since they were served with the 10 Day Notice to End Tenancy, and having failed to pay any rent for January 2022. The tenants do not dispute that they have failed to pay the outstanding balance as documented in the landlord's summary. On this basis, I allow the landlord a monetary order for the outstanding balance of unpaid rent plus the unpaid rent for January 2022.

As the landlord's application has merit, I allow the landlord to recover the filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$1,275.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

### **Conclusion**

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

I allow the landlord's monetary claim as set out in the table below. The landlord is issued a monetary order in the amount of \$8,013.47. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in satisfaction of the monetary claim.

Unpaid Rent per landlord's summary of claimed amounts (includes \$1,700.00 payment made in December 2021)	\$6,638.47
Unpaid Rent for January 2022	2,550.00
Filing Fee	100.00
Less Deposit Held by Landlord	-1,275.00
<b>Total Monetary Order</b>	<b>\$8,013.47</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: April 08, 2022

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Residential Tenancy Branch