



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on February 16, 2023 (the “10-Day Notice”);
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

P.B. appeared as the Landlord. The Tenant did not attend the hearing, nor did someone attend on their behalf.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that he served the Notice of Dispute Resolution and his documentary evidence on the Tenant by way of registered mail sent on March 8, 2023. Proof of service in the form of photographs of the registered mail and tracking number were provided by the Landlord. I find that the Landlord served his application materials in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord’s application materials on March 13, 2023.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 11:14 without participation of the Tenant.

### Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled to his filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following aspects with respect to the tenancy:

- The Tenant moved into rental unit on November 1, 2017.
- Rent of \$1,400.00 was due on the first of each month.
- A security deposit of \$700.00 and a pet damage deposit of \$700.00 was paid by the Tenant.

I am provided with a copy of the tenancy agreement by the Landlord.

The Landlord testifies that the Tenant failed to pay rent on February 1, 2023 and March 1, 2023. I am advised that the 10-Day Notice was posted to the Tenant's door on February 16, 2023 as a result of the non-payment of rent.

The Landlord advises that the Tenant has vacated the rental unit. I am told by the Landlord that he contacted the Tenant on March 24, 2023 to confirm when a move-out inspection could be conducted and was told by the Tenant on that day that he had moved out. The Landlord says he went to the rental unit to find the door open and the unit in a level of disarray. The Landlord testifies that he locked the door and left as he was uncertain on whether he could take back possession due to this hearing having already been scheduled.

### Analysis

The Landlord applies for a order of possession and a monetary order for unpaid rent.

Looking first at the order of possession, I accept the Landlord's evidence that the Tenant gave notice he had vacated on March 24, 2023. In essence, the Tenant

abandoned the property as no notice appears to have been given by him to the Landlord. The Landlord expressed a level of caution in taking possession of the rental unit. However, the Tenant no longer resides in the rental unit, with the Tenant telling him the same on March 24, 2023. I find that the issue of an order of possession is moot. The Tenant no longer has possession of the rental unit having vacated on or about March 24, 2023. There is nothing preventing the Landlord from taking possession of the rental unit. Given this, I decline to grant an order of possession as the Landlord. This claim is dismissed.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. In the present circumstances, I accept that the Tenant failed to pay rent on February 1, 2023 and March 1, 2023 and had no lawful reason for doing so. I find that the Tenant breached his obligation to pay rent as per the tenancy agreement and s. 26 of the *Act*. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

I accept the Landlord's undisputed evidence that rent for February 2023 and March 2023 was unpaid, such that total loss is \$2,800.00 (\$1,400.00 x 2). I find that mitigation was not possible as the Tenant continued to reside within the rental unit during this period. Accordingly, I find that the Landlord is entitled to a monetary award for unpaid rent totalling \$2,800.00. I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the security deposit and pet damage deposit, totalling \$1,400.00, in partial satisfaction of the unpaid rent claim.

### Conclusion

The Landlord's claim for an order of possession is moot as the Tenant has vacated the rental unit. I dismiss the Landlord's claim under s. 55 of the *Act* without leave to reapply.

The Landlord has established a monetary claim under s. 67 of the *Act* for unpaid rent totalling \$2,800.00.

I find that the Landlord was largely successful on his application. Accordingly, I grant the Landlord's claim under s. 72(1) of the *Act* and order the Tenant pay the Landlord's \$100.00 filing fee.

I direct the Landlord retain the security deposit of \$700.00 and the pet damage deposit of \$700.00 in partial satisfaction of the total amount owed to him by the Tenant.

Taking the above into account, I order pursuant to ss. 67 and 72 of the *Act* that the Tenant pay **\$1,500.00** to the Landlord ( $\$2,800.00 + \$100.00 - \$700.00 - \$700.00$ ).

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with 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 30, 2023

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Residential Tenancy Branch