



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 1:45 p.m. to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and make submissions.

The landlord testified that on August 10, 2022, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenants by e-mail as per the pre-agreed address of service. The landlord provided a copy of the sent e-mail in support of service.

Based on the above evidence, I am satisfied that the tenants were served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 &/or 90 of the Act. The hearing proceeded in the absence of the tenants.

### **Preliminary Issue – Amendment to Landlord's Monetary Order**

The landlord submitted a revised monetary order; however, the landlord did not file a formal Amendment application as required by the Residential Tenancy Branch rules of Procedure. As such, this application was limited to only the remedy originally applied for.

### Issues

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

### Background and Evidence

The tenancy began on December 18, 2021 with a monthly rent of \$2800.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$1400.00 at the start of the tenancy which the landlord continues to hold.

The landlord's claim is for outstanding rent in the amount of \$2800.00 for the month of July 2022. The landlord testified that the tenants overheld the rental unit for this month after being issued a 10 Day Notice to End Tenancy for Unpaid Rent for the month of June 2022. The landlord subsequently obtained an order of possession and was awarded unpaid rent for the month of June 2022. The tenants did not vacate until July 31, 2022.

### 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 accept the landlord's uncontested evidence and find that the tenants were obligated to pay overhold rent in the amount of \$2800.00 for the month of July 2022. I accept the landlord's claim for outstanding rent of \$2800.00.

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 \$2900.00.

The landlord continues to hold a security deposit of \$1400.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1500.00.

### Conclusion

I grant the landlord a Monetary Order in the amount of \$1500.00. Should the tenants 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 18, 2023

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Residential Tenancy Branch