



# 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 and utilities pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 9:42 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord testified that on December 15, 2022, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenants by registered mail. The landlord provided a registered mail receipt and tracking number in support of service. The landlord testified the mail was served to a forwarding address provided by the tenants.

Based on the above evidence, I find the tenants to be deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the *Act*. The hearing proceeded in the absence of the tenants.

### Issues

Is the landlord entitled to a monetary award for loss of 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 October 1, 2021 and ended on November 30, 2022. The monthly rent was \$1420.00 payable on the 1<sup>st</sup> day of each month which included \$25.00 for parking. The tenants paid a security deposit of \$687.50 at the start of the tenancy which the landlord continues to hold.

The landlord testified that the tenants provided insufficient notice to end the tenancy as they provided a notice dated November 10, 2022 to end the tenancy effective November 30, 2022. The landlord is therefore claiming \$1420.00 as loss of rent including parking for the month of December 2022. The landlord testified they were not able to re-rent the unit until January 1, 2023.

In the hearing, the landlord withdrew the claim for unpaid utilities.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

*Section 45(1) of the Act sets out that:*

*A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date after the landlord receives the notice, and*

*(b) is before the day in the month...that rent is payable under the tenancy agreement.*

A notice given under this section must be in writing and comply with the form and content requirements of section 52 of the Act.

The tenants provided a notice to the landlord on November 10, 2022 to end the tenancy effective November 30, 2022. The earliest possible effective date for the tenants' notice to end this periodic tenancy pursuant to section 45 of the Act was December 31, 2022. The tenants did not provide sufficient notice to end the tenancy; therefore, the tenants were still responsible to pay rent for December 2022. I accept the landlord's claim for loss of rent in the amount of \$1420.00.

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 \$1520.00.

The landlord continues to hold a security deposit and pet deposit in the amount of \$687.50. I allow the landlord to retain the security deposit and pet 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 \$832.50.

### Conclusion

Pursuant to section 38 and 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$832.50. 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 24, 2023

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Residential Tenancy Branch