



# 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:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for damage to the rental unit 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 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 9:55 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on January 13, 2023, copies of the Application for Dispute Resolution and Notice of Hearing were sent to each of the tenants by registered mail. The landlord provided registered mail receipts and tracking numbers in support of service. The landlord testified that each of the packages were returned to him as unclaimed. The landlord testified that he knows the tenants received the notice cards to pick the registered mail as the notice cards were left on his doorstep by the tenants before they vacated the unit on January 20, 2022.

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 & 90 of the Act. The hearing proceeded in the absence of the tenant.

### **Preliminary Issue – Amendment(s) to Landlord's Application**

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenants did not vacate the rental unit January 20, 2023; therefore, asked to amend his claim to include outstanding rent for January 2023. Although the tenants did not have prior notice of this claim, I find that the tenants should reasonably have known that the landlord would suffer this loss if the tenants neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment for the unpaid rent only.

The landlord filed various amendments to his original application however all the amendments were filed after the tenants vacated the rental unit. The landlord did not serve the tenants with the amended applications so they will not be considered in this hearing.

The landlord withdrew his claim for an order of possession as the tenants have vacated. The landlord also withdrew his claim for damages as he has not served the tenants with the amended application. The landlord also stated he would reapply for the utilities portion of his application with the future claim for damages. The landlord's claim for loss of rent for February 2023 is also dismissed with leave to reapply as the landlord would be required to first serve the tenants with this amendment as well.

### Issues

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

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

### Background and Evidence

The tenancy began on July 1, 2023 with a monthly rent of \$2500 payable on the 1<sup>st</sup> day of each month. The tenants were also responsible for 80% of the utilities.

The landlord submitted a copy of a 10 Day Notice dated December 16, 2022. The 10 Day Notice indicates an outstanding rent amount of \$2500.00 which was due on December 1, 2022.

The landlord testified that on December 16, 2022 he served the tenants with the 10 Day Notice by posting a copy to the door of the rental premises. The landlord testified that the tenants did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice. The landlord testified the tenants did not

vacate as per the effective date of the 10 Day Notice and did not pay the overholding rent for January 2023.

The landlord's monetary claim is for outstanding rent in the amount of \$5000.00. The landlord testified that this includes unpaid rent for the months of December 2022 and January 2023.

### 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 claim for outstanding rent of \$5000.00 which included rent for December 2022 and January 2023. 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 \$5100.00.

### Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$5100.00. 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: February 16, 2023

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Residential Tenancy Branch