



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice")
- an Order for the landlord to comply with the Act, regulation and/or the tenancy agreement
- a Monetary Order to recover the cost of the filing fee

The landlord's application is seeking orders as follows:

- an Order of Possession for unpaid rent
- an Order of Possession for the tenant providing written notice to end the tenancy
- a Monetary Order for the unpaid rent
- a Monetary Order for monetary loss or money owed
- a Monetary Order to recover the cost of the filing fee

The hearing started at 9:30 a.m. I left the conference open for the tenant to connect until 9:55 a.m. In the absence of the tenant, under Rule 7.1 and 7.3 of the Rules of Procedure, I order the tenant's application for the filing fee dismissed, without leave to reapply, the tenant's remaining claim is dismissed with leave to reapply.

The tenants vacated the rental unit on October 20, 2023, the landlord is no longer seeking to obtain an Order of Possession.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent to the tenants to a pre-agreed email on October 19, 2023. The landlord testified that the tenant's application was sent to them by email and they used the same email address to send their application.

I deem the tenants were served under section 89 of the Act. I proceeded with the hearing in the absence of the tenants as I find that they have been properly notified.

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

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Is the landlord entitled to recover the cost of the filing fee?

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The landlord testified that this tenancy began on April 15, 2023, with a monthly rent of \$1,400.00, due on fifteenth day of the month, with a security deposit in the amount of \$700.00.

The landlord testified that the tenants vacated the rental unit on October 20, 2023, and are owing \$700.00 for September 15 – October 15, 2023, rent and \$1,400.00 for October 15 – November 15, 2023, rent totalling \$2,100.00.

The landlord testified that they are seeking \$250.00 for their lost time off work to prepare for this dispute.

### **Analysis**

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

**Is the landlord entitled to a Monetary Order for unpaid rent?**

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I find the landlord has established a claim for unpaid rent owing for September 15 – October 15, 2023 (\$700.00) and October 15 – November 15, 2023 (\$1,400.00).

I accept the landlord's undisputed testimony that the tenants vacated the rental unit on October 20, 2023, and did not pay for the balance of September 15 – October 15, 2023, and all of October 15 – November 15, 2023, rent totalling \$2,100.00.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent under section 26 of the Act, in the amount of \$2,100.00.

**Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?**

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord failed to provide sufficient documentary evidence or testimonial evidence to satisfy the four elements above that a loss existed for the \$250.00 they are seeking for their time off work to prepare for this dispute.

For the above reasons, the landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

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

As the landlord was partially successful in their application, I find that the landlord is entitled to recover \$50.00 for the filing fee paid for this application under section 72 of the Act.

### Conclusion

I grant the landlord a Monetary Order in the amount of **\$2,150.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 26 of the Act	\$2,100.00
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$50.00
<b>Total Amount</b>	<b>\$2,150.00</b>

The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. 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.

The landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

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: November 06, 2023

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Residential Tenancy Branch