



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, CNR, ERP

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit. The Tenant applied to cancel a Notice to End Tenancy for unpaid rent and for an order that the Landlord make emergency repairs.

At the beginning of the hearing, the Parties confirmed that the tenancy has ended and as a result, the Tenant's application is dismissed without leave to reapply and the Landlord's application for an Order of Possession is dismissed without leave to reapply.

### Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This tenancy started on August 1, 2001. The Landlord said the Tenant advised him that she would move out no later than September 21, 2009 however, he admitted that the Tenant left some belongings behind and that he changed the locks on September 25, 2009. The Landlord said he left the Tenant a letter (posted to the door) with a contact number she could call to gain entry. The Tenant said she was living in a new residence as of September 11, 2009 and returned on a couple of occasions to retrieve more belongings until September 25, 2009 when she was locked out. The Tenant denied that there was a letter on her door with a contact number.

Under the Parties' tenancy agreement market rent was \$1,300.00 per month but with a subsidy, it was \$442.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$350.00 on August 10, 2001. The Addendum to the Parties' tenancy agreement states that the Tenant must provide the Landlord with income verification information when requested or else the Tenant will lose her rent subsidy. The Landlord claimed that a Request for Income Verification was mailed to the Tenant on July 6, 2009 and posted to her door by the Resident Manager (and witnessed by his spouse) on July 20, 2009. The Landlord said he did not receive any information from the Tenant and therefore posted another letter to her door on August 18, 2009 advising her that her rent would be increased effective September 1, 2009 if she did not

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provide the requested information. The Landlord's resident manager claimed that he told the Tenant a number of times in July and August 2009 that if she didn't provide her income information, she would lose the rent subsidy in September. The Landlord's resident manager also claimed that all the Tenant had to do was to get a Rent Subsidy form from his office which was on the rental property and open every day.

The Tenant denied receiving the Landlord's Request for Income Verification in July either by mail or posted to her door. The Tenant said she received the Landlord's letter dated August 18, 2009 but believed the Landlord wanted her to leave. The Tenant said she contacted the Landlord and requested an Income Verification Package but none was ever sent to her. The Tenant admitted that she did not pay rent for September 2009 but claimed she was advised by her MLA that she did not need to pay if she was given an eviction Notice.

## Analysis

I find that the tenancy ended on September 21, 2009 when the Tenant removed substantially all of her belongings. Consequently, I find that an Order of Possession is not necessary.

I also find on a balance of probabilities that the Tenant was served with a Request to Provide Income Verification on July 20, 2009 and was advised a number of times in July and August 2009 by the Landlord's Resident Manager that if she failed to provide her income information she would lose the rent subsidy. I find that the Tenant failed or refused to provide her income verification information to the Landlord and that as a result, the Landlord was entitled under the tenancy agreement to charge the Tenant market rent for September 2009.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one clear months notice. As a result, I find that the Landlord is entitled to recover unpaid rent to September 21, 2009 and a loss of rental income to September 30, 2009 in the total amount of \$1,300.00.

As the Landlord has been successful in this matter, I find that he is entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the



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damage award. The Landlord will receive a monetary order for the balance owing as follows:

September Rent:	\$1,300.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,350.00
Less: Security deposit:	(\$350.00)
Accrued interest:	<u>(\$16.69)</u>
Balance Owing:	\$983.31

## Conclusion

The Tenant's application is dismissed without leave to reapply. The Landlord's application for an Order of Possession is also dismissed without leave to reapply. A monetary order in the amount of **\$983.31** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) 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: October 02, 2009.

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Dispute Resolution Officer