



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes            OPR, OPC, MNR, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for unpaid rent, for compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement and to recover the cost of the filing fee. At the outset of the hearing the landlord stated that the tenants have moved out and she therefore withdraws her application for an Order of Possession.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the Act. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents five days after mailing as per section 90(a) of the Act.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Has the landlord established a monetary claim due to the loss of rent and compensation for damage or loss under the Act?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?



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## Background and Evidence

This tenancy started on May 15, 2009 and ended on July 01, 2009. Rent for this furnished unit was \$1,300.00 per month plus utilities. Rent was due on the 1<sup>st</sup> of each month.

The landlord testifies that the tenant was doing some construction work for them and they agreed that he could move into the rental property and pay rent of \$1,300.00 per month plus the utilities and he would pay a security deposit of \$650.00. The tenant moved into the rental unit on May 15, 2009. Sometime after this he was joined by another tenant who the landlords refer to as his wife. The landlords asked the tenants to sign a tenancy agreement and pay the rent and damage deposit.

The landlord testifies that the tenants' wife gave them a cheque for \$1,300.00 but after this was deposited at their bank the tenants stopped the cheque. The landlords testify that the tenants did not pay the security deposit as requested.

The landlords served the tenants with a 10 Day Notice for Unpaid rent on June 15, 2009. The landlords also served the tenants with a One Month Notice to End Tenancy for Cause on June 24, 2009. The reasons stated on the Notice were that the tenants had seriously jeopardized the health, safety or lawful right of the landlord, the tenants have engaged in an illegal activity that has or is likely to jeopardize a lawful right or interest of the landlord and the security deposit was not paid within 30 days as required under the tenancy agreement. The tenants vacated the rental unit on July 01, 2009.

The landlord also seeks a loss of revenue for July, 2009 as the tenants did not vacate the rental unit until July 01, 2009 and left damages and cleaning. This prevented the landlord from re-renting the unit for July, 2009. As the parties have a dispute underway at the Provincial Court for damages due to a construction contract between the Parties the landlord has not provided any evidence as to the damages incurred at the rental unit. The landlord has not applied for a Monetary Order for damage to the rental unit.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the landlord. In the absence of any evidence from the tenant's despite having been given opportunity to provide evidence and attend this hearing, I find that the landlord is entitled to recover rent arrears from May 15 to 30, 2009 of \$650.00 and for June, 2009 of \$1,300.00. Section 26 of the Act states:

### **Rules about payment and non-payment of rent**

- 26 (1) 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.

Therefore, I find the tenant did not pay rent pursuant to section 26 of the Act and the landlord is entitled to a Monetary Order to recover the outstanding rent. As the landlords have been largely successful in this matter, they are also entitled to recover the \$50.00 filing fee for this proceeding.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for May and June, 2009	\$1,950.00
Total amount due to landlord	\$2,000.00

The landlords have also applied for a loss of revenue for July, 2009, however they have not submitted any additional evidence to support this section of their claim as they have a dispute underway at the Provincial Court. In light of this I dismiss this portion of the landlords claim with leave to reapply.

## Conclusion



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I HEREBY FIND in favor of the majority of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,000.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlord's application for Compensation for damage or loss under the Act is dismissed with 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 20, 2009.

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Dispute Resolution Officer