



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent, for a loss of rental income and to recover the filing fee for this proceeding. At the beginning of the hearing the Landlord withdrew her application for an Order of Possession because the tenancy had ended.

This matter was originally scheduled for hearing on October 30, 2009. However the hearing was reconvened to today's date so that the Landlord could serve the Tenant with her evidence package at her current address. The Landlord's application was amended on October 30, 2009 to change the Tenant's address for service and the Landlord confirmed that she would send a new hearing package to the Tenant at her forwarding address. The Landlord admitted that she had not served the other Tenant listed on the tenancy agreement with a copy of the hearing package (but had no forwarding address for him) and as a result, the application and style of cause was also amended to remove that tenant as a party to these proceedings.

At the beginning of the reconvened hearing, the Landlord sought to amend her application to include claims for damages to the rental unit. Given that the Tenant was given no notice of these claims, the Landlord's request to amend her application was denied. The Landlord was however given leave to amend her application in this matter to include a claim to keep the security deposit in partial payment of the alleged rent arrears, however she did not wish to do so. The Landlord withdrew her claim for a loss of rental income for October 2009.

### Issues(s) to be Decided

1. Are there arrears of rent and if so how much?

### Background and Evidence

This month to month tenancy started on March 1, 2009 and ended on September 12, 2009 when the Tenant moved out. Rent was \$700.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$350.00 at the beginning of the tenancy.

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On August 4, 2009, the Tenant gave the Landlord written notice she was ending the tenancy on September 30, 2009. The Tenant's rent cheque for September 2009 was returned for non-sufficient funds so on September 5, 2009, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the rental unit door.

The Tenant argued that the Landlord left her a voice mail message advising her that if she moved out early, the Landlord would not apply for dispute resolution. The Tenant said she told the Landlord that she would be moving out on September 18, 2009 and the Landlord's boyfriend observed her moving out on September 12, 2009. The Landlord claimed that she only discovered on September 19, 2009 that the Tenant had moved out.

## Analysis

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.

The Landlord served the Tenant with a 10 Day Notice on September 5, 2009. If the Tenant is deemed to have given notice ending the tenancy on that day, the earliest that notice could take effect would have been October 31, 2009. However, the Tenant gave the Landlord written notice she was ending the tenancy on September 30, 2009 and as a result, I find that the Tenant is still responsible for rent for the period September 1 – 12, 2009 and for a loss of rental income for September 13 – 30, 2009 for a total of **\$700.00**. I also find that the Landlord is entitled to recover NSF fees charged by her bank in the amount of **\$7.50**.

As the Landlord has been successful in this matter, I find that she is entitled to recover her registered mail expenses for October 30, 2009 in the amount of **\$9.11**. I find that the Landlord is not entitled to her registered mail expenses for September 29, 2009 as by that time she knew or ought to have known that the Tenant no longer resided at the rental unit address to which that registered mail was sent. I also find that the Landlord is entitled to recover her **\$50.00** filing fee for this proceeding.

## Conclusion

A monetary order in the amount of **\$766.61** 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



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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: December 11, 2009.

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Dispute Resolution Officer