



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF, SS, O

### Introduction

This was an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the monetary order. The hearing was conducted by conference call. The landlord and the tenant participated in the hearing and provided documents and written submissions.

### Issues(s) to be Decided

Is the landlord entitled to a monetary order and if so in what amount

### Background and Evidence

The rental unit is a strata title property. The tenancy began on February 15, 2010 for a fixed term ending August 15, 2010 and thereafter month to month. Rent in the amount of 1,300.00 was payable on the 15<sup>th</sup> day of each month. The tenant paid a \$650.00 security deposit and a \$250.00 pet deposit at the commencement of the tenancy.

The landlord claimed that the tenant failed to pay rent for July, 2010 and moved out without notice. The landlord testified that the tenant did not return the keys to the rental unit, but instead gave them to a stranger who is a "known gang member". He testified that as of the date of the hearing he has not regained possession of the rental unit and claimed unpaid rent for July and loss of revenue for August, September and October.

The tenant testified that on June 26, 2010 while she was out of town the locks to the rental unit were changed without her knowledge. A note was left on the door instructing

the tenant to immediately call a provided telephone number. The tenant said that M.P., the estranged wife of the landlord found the address of the tenant's mother on mail at the rental unit. She called the tenant's mother, identified herself as the actual owner of the rental unit and told her she had changed the locks. The tenant's mother later obtained a new key to the rental unit and gave it to the tenant on June 29<sup>th</sup>.

On June 29, 2010 the tenant stopped payment of the rent cheque for the month commencing July 15<sup>th</sup>.

On July 22, 2010 the landlord served the tenant with 10 day Notice to End Tenancy for unpaid rent by giving a copy to her at her work-place. Accusations have been made about the landlord's actions in serving documents, but they are not relevant to the issues on this application and I make no findings with respect to them.

The tenant moved out of the rental unit on July 30, 2010. She said that she sent an e-mail to the landlord wherein she offered to pay him \$400.00 and have him put her \$900.00 deposit towards rent and she would remain in the unit until August 15<sup>th</sup>. The tenant said the landlord rejected her request. The tenant moved out on July 30, 2010. She said that her mother gave the keys to M.P., the landlord's wife on or about July 31, 2010.

### Analysis and conclusion

I find that the disputed ownership of the rental unit would have justified the tenant in giving a notice to the landlord ending the tenancy, but on the facts she did not give the landlord any written notice. She stopped payment of rent that was due on July 15, 2010. She then offered to have the landlord apply the security and pet deposit to unpaid rent and pay a further \$400.00 to stay until the end of the fixed term on August 15<sup>th</sup>. The landlord was not obliged to allow the tenant to apply her deposit as rent. He was entitled to have the rent paid and receive written notice ending the tenancy.

I find that the landlord is entitled to a monetary order for the rent that was due July 15, 2010, but not to rent or loss of revenue for any period thereafter. The landlord complained that the tenant gave keys to the rental unit to a stranger; in fact the tenant's mother gave the keys to the landlord's estranged wife who asserted that she was the owner of the rental unit. The tenant was caught in the middle of a matrimonial dispute and she was understandably unsure which of the parties was entitled to possession of the rental unit.

The landlord said the tenant gave the keys to a stranger and a known gang member. He claimed to be afraid of the supposed gang members and for that reason had not regained possession of the rental unit. He said the tenant should be responsible for loss of revenue for August and subsequent months. I do not accept the landlord's evidence concerning delivery of the keys and I reject his claim for compensation for any month after July. It will be up to the landlord to resolve his dispute concerning ownership and possession of the rental unit with his wife; this is no concern of the tenant.

I find that the landlord is entitled to claim \$1,300.00 for rent due on July 15, 2010, but not thereafter. The landlord is entitled to recover the \$50.00 filing fee paid for this application for a total award of 1,350.00. I order that the landlord retain the security and pert deposits in the amount of \$900.00 in partial satisfaction of this award and I grant the landlord an order under section 67 in the amount of \$450.00. This order may be registered in the Small Claims Court and enforced as an order of that court.