



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPB, MNSD, FF, SS

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession, to keep the Tenant's security deposit, to recover the filing fee for this proceeding and for an Order permitting the Landlords to serve the Tenant in a different way than provided for under the Act.

The Landlords named a second party as a Tenant on their application (I.C.), however that person is not a party to the tenancy agreement and the Landlords claim that he was an unauthorized occupant. Consequently, I find that I.C. is not properly named as a party in these proceedings and the Application and style of cause are amended by removing him as such.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") in person on July 19, 2010. Based on the evidence of the Landlords I find that the Tenant was served with their hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence. In the circumstances, I also find that the Landlord's application for substituted service of documents is unnecessary and it is dismissed without leave to reapply.

### Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are the Landlords entitled to keep all or part of the Tenant's security deposit?

### Background and Evidence

This fixed term tenancy started on November 1, 2009 and was to expire on October 31, 2010. Rent was \$650.00 per month payable in advance on the 1<sup>st</sup> of each month plus utilities. The Tenant paid a security deposit of \$325.00 on October 27, 2009.

In their application, the Landlords claimed that the Tenant allowed an unauthorized occupant to reside in the rental unit with her. On July 1, 2010, the Tenant signed a Mutual Agreement to End the Tenancy on July 4, 2010 and vacated the rental unit. However, the Landlord's claim that the unauthorized occupant continued to reside in the rental unit until September 1, 2010.



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## Analysis

As the tenancy has ended, I find that there is no need for an Order of Possession and that part of the Landlords' application is dismissed without leave to reapply.

During the hearing, the Landlords sought to keep the Tenant's security deposit in partial satisfaction of an anticipated loss of rental income for September 2010. However, the Landlords did not make a claim for a loss of rental income on their application and provided no evidence in support of it. Furthermore, section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must take reasonable steps to re-rent a rental unit as soon as possible to minimize a loss of rental income.

Notwithstanding the Landlords' failure to include a claim for a loss of rental income for September 2010 on their application, I find that such a claim is pre-mature in any event as the Landlords must still attempt to mitigate any losses for the balance of September 2010. Consequently, the Landlords will have to file a separate application for dispute resolution to claim this relief.

As the Tenant's unauthorized occupant vacated the rental unit only one day prior to this hearing, I find that the Landlords are entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep \$50.00 from the Tenant's security deposit in payment of the filing fee. The Landlords' application to keep the balance of the Tenant's security deposit is dismissed with leave to reapply.

## Conclusion

The Landlords' application(s) for an Order of Possession and for an Order for Substituted Service are dismissed without leave to reapply. The Landlords' application to recover the filing fee for this proceeding is granted. The Landlords' application to keep all of the Tenant's security deposit 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: September 02, 2010.

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Dispute Resolution Officer