



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR FF

### Preliminary Issues

After reviewing the Landlord's application for dispute resolution, at the onset of the hearing, the Landlord confirmed she wished to amend this application to request to keep all or part of the security deposit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord had indicated these requests in the notes written in the details of the dispute where she has claimed loss of rent of \$450.00 for September 2010, \$300.00 for liquidated damages, less the \$450.00 security deposit; therefore the Tenant was made aware of the Landlord's requests in the initial application and would not be prejudiced by the Landlord's request to amend the application.

Based on the aforementioned I approve the Landlord's request to amend the application to include the request to keep all or part of the security deposit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to the *Residential Tenancy Policy Guideline # 23*.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 20, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on September 25, 2010, the fifth day after they were mailed 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. No one appeared at

the teleconference hearing on behalf of the Tenant despite him being served notice of this hearing in accordance with the Act.

## Issue(s) to be Decided

1. Did the Tenant breach the Act, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to a monetary claim as a result of that breach?

## Background and Evidence

The parties entered into a written fixed term tenancy agreement effective September 15, 2009 and was set to switch to a month to month tenancy agreement after September 30, 2010. Rent was payable on the first of each month in the amount of \$900.00 and on January 22, 2010 the Tenant paid a security deposit of \$450.00.

The Landlord referred to her documentary evidence which included among other things a copy of the tenancy agreement, a copy of the tenant's payment ledger, and a copy of an e-mail from the Tenant dated August 25, 2010 informing the Landlord he had vacated the unit the previous weekend.

The Landlord testified she did not regain possession of the unit until August 25, 2010 and was not able to re-rent the unit until October 1, 2010. The Tenant failed to pay the full amount owing for rent from April 2010 onward leaving an accumulated balance owing of \$2,200.00 (April \$100 + May \$400 + June \$500 + July \$300 + Aug \$900). The Landlord is also seeking \$450.00 for loss of rent for September 2010, \$300.00 for liquidated damages as per the tenancy agreement, and to keep the security deposit in partial satisfaction of her claim.

## Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant Landlord pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenant.

**Claim for unpaid rent.** The Landlord claims for accumulated unpaid rent of \$2,200.00 between April 1, 2010 and August 31, 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. After reviewing the evidence I find the Landlord has proven her claim for loss, as listed above, in the amount of \$2,200.00.

**Claim for loss of rent.** Section 45(2) of the *Act* provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is not earlier than the date specified in the tenancy agreement as the end of the tenancy agreement. Therefore the Tenant could not have legally ended this tenancy until the end of the fixed term on September 30, 2010. That being said, the Landlord only made application for \$450.00 for September 2010 loss of rent. Based on the aforementioned I hereby approve the Landlord's claim of \$450.00.

**Liquidated damages.** The evidence supports the parties agreed, in advance, the amount payable by the tenant in the event of a breach of the tenancy agreement would be \$300.00 for liquidated damages as noted on the tenancy agreement. The tenancy ended on August 25, 2010 when the Landlord was advised the Tenant had vacated the unit, which is prior to the end of the fixed term. Therefore, based on the aforementioned I find the Landlord has proven entitlement to her claim of \$300.00 in liquidated damages.

**Filing Fee \$50.00.** The Landlord has succeeded with her claim; therefore I award recovery of the filing fee from the Tenant.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:



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Accumulated unpaid rent (April 1, 2010 to August 31, 2010)	\$2,200.00
Liquidated damages	300.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$3,000.00</b>
Less Security Deposit of \$450.00 plus interest of \$0.00	-450.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$2,550.00</b>

## Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$2,550.00**. The order must be served on the Respondent Tenant and is enforceable through the Provincial Court 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*.

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Dated: December 29, 2010.

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Residential Tenancy Branch