



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for Unpaid Rent, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application. At the outset of the hearing the landlord withdrew his application for an Order of Possession as the tenant has vacated the rental unit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant on May 27, 2011. The tenant was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

Both parties agree that this tenancy started on December 01, 2010. This was a fixed term tenancy which was due to expire on November 30, 2011. The tenant moved from the rental unit on May 31, 2011. Rent for this unit was \$1,250.00 per month and was due in advance on the first day of each month. The tenant failed to pay his security deposit at the start of his tenancy.

The landlord testifies that the tenant was served with a 10 Day Notice to End Tenancy on May 05, 2011. The tenant agrees he received both pages of this document although neither party has provided it in evidence.

The landlord testifies that the tenant paid rent with post-dated cheques however each month these cheques were presented to the bank they were returned as there were insufficient funds available to honour them. The tenant paid some outstanding amounts by cash. The landlord has provided an accounting statement showing the amount of outstanding rent to date. The landlord asked his accountant to explain the rent statement and she helped the Dispute Resolution officer determine that the amount of unpaid rent is now \$2,270.00.

The landlord states they started to advertise the unit on Craig's list around the middle of May, 2011 however despite the adverts it remains empty and he is hoping it will be re-rented for July 01, 2011. The landlord also states the tenant 'trashed' the unit and the landlord has had to have the unit re-painted. Therefore, the landlord also seeks a loss of rental income for June, 2011 as this was a fixed term tenancy which would not expire until November 30, 2011.

The landlord also testifies that the tenant did not pay the security deposit at the start of the tenancy to the sum of \$625.00. The landlord also seeks to recover this from the tenant.

The tenant does not dispute that he owes some rent to the landlord but states he also withheld some rent because the landlord did not repair a leak in the unit and some other outstanding repairs he had asked him to do.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for unpaid rent; I refer both parties to s. 26 of the Act which states *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.*

As the parties agree that rent is due on the first day of each month in advance and the tenant does not dispute that he owes some rent and he withheld some rent, it is my decision that the landlord is entitled to recover the rent arrears of **\$2,270.00** from the tenant.

With regard to the landlord application to recover a loss of rental income for June, 2011;

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant, while the tenant remains in possession of the premises is sufficient notice. In this case the landlord only seeks to pursue the tenant for a loss of revenue for June, 2011. Therefore, as this is a fixed term tenancy which would not have expired until November, 2011; and as the landlord has attempted to re-rent the unit for June, 2011 but was unsuccessful; the landlord has therefore established his claim for a loss of rental income for June, 2011 to the sum of **\$1,250.00**.

With regard to the landlords claim to recover the security deposit from the tenant; a security deposit is a sum held in trust by the landlord for the tenant until the end of the tenancy and would then be dealt with in accordance with s. 38 of the *Act*. A landlord is entitled to serve the tenant with a One Month Notice to End Tenancy at the start of the tenancy if the security

deposit is not paid within 30 days of that date. The landlord failed to do this and is not now entitled to pursue the tenant for the security deposit after the tenancy has ended. Consequently, this section of the landlords' monetary claim is dismissed.

As the landlord has been partially successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the Act. A Monetary Order has been issued to the landlord for the following amount pursuant to s. 67 of the *Act*:

Unpaid rent	\$2,270.00
Subtotal	\$3,520.00
Plus filing fee	\$50.00
Total amount due to the landlord	\$3,570.00

#### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,570.00**. The order must be served on the respondent 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*.

Dated: June 21, 2011.

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Residential Tenancy Branch