



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, an Order to keep the tenants security deposit and to recover the filing fee paid for this application. At the outset of the hearing the landlords' agent withdrew the landlords' application for an Order of Possession as the tenant has vacated the rental unit.

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 07, 2011. Mail receipt numbers were provided in the landlords' documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

The landlord declares this month to month tenancy started on February 01, 2011 when the tenant moved from a different suite. Rent for this unit was \$725.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$362.50 on August 01, 2010. The tenant moved from the rental unit on September 10, 2011.

The landlords' agent testifies that the tenant did not pay all his rent for June, 2011 leaving arrears of \$325.00. The tenant also failed to pay rent for July, 2011 and the landlords' agent states the tenant was served with a Notice to End Tenancy on July 04, 2011 by posting the Notice to the tenants' door. This Notice states the tenants have five days to pay the outstanding rent or dispute the notice by applying for dispute resolution or the tenancy will end on July 14, 2011. The landlord testifies that since that time the tenant also failed to pay rent for August, and September, 2011.

The landlord testifies the tenant had a written agreement on August 16, 2011 to pay the outstanding rent, but failed to comply with this and moved from the rental unit on September 10, 2011. The landlord also seeks to recover \$725.00 for loss of revenue for October, 2011 as they have been unable to re-rent the unit by October 01, 2011.

The landlord seeks a total amount of unpaid rent of \$3,225.00.

The landlord also seeks to recover late fees as indicated in the tenancy agreement of \$20.00 for June, July, August and September, 2011 to a total sum of \$80.00

The landlord seeks an Order to keep the tenants security deposit of \$362.50.00 and seeks an Order to recover the \$50.00 filing fee.

### Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have considered the landlords documentary evidence and affirmed testimony of the landlords' agent. S. 26 of the *Act* states a tenant must pay rent on the day it is due. The landlords' agent has testified that rent is due on the 1<sup>st</sup> day of each month and the tenant failed to pay the full rent for June, 2011 and no rent was paid for July, August and September, 2011. Therefore, I find the landlord is entitled to recover rent arrears of **\$2,500.00** pursuant to s. 67 of the *Act*.

The landlord has also applied for a loss of rental income for October, 2011. As the landlord has not shown what steps they took to mitigate their loss by advertising the unit for rent after the 10 Day Notice was served upon the tenant. The landlord also failed to enforce the Notice after the 10 day time frame had elapsed. Consequently, I find the landlord is not entitled to recover a loss of income for October, 2011 of \$725.00.

The tenancy agreement states the landlord will charge \$20.00 in late fees for each month rent was paid late. Consequently, the landlord is entitled to recover **\$80.00** in late fees pursuant to s. 67 of the *Act*.

I Order the landlord to keep the tenants security deposit of \$362.50 in partial satisfaction of the rent arrears pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord will receive a monetary order for the following amount:

Unpaid rent June, July, August and September, 2011	\$2,500.00
Late fees	\$80.00
Plus filing fee	\$50.00
Less security deposit	(-\$362.50)

Total amount due to the landlord	\$2,267.50
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Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,267.50**. The order must be served on the 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*.

Dated: October 12, 2011.

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Residential Tenancy Branch