



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and the filing fee.

The Landlord provided affirmed testimony that she served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 01, 2011, and provided the receipt and tracking slip from Canada Post as evidence. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter(s)

Based on the testimony and evidence of the Landlord, they waived the 10 Day Notice to End Tenancy issued by the Landlord on September 02, 2011, and the Landlord and Tenant signed a mutual agreement to end the tenancy on October 15, 2011. When the Landlord performed an inspection of the rental unit on October 14, 2011, they found that the Tenant had already moved out. The Landlord confirmed that they have possession of the rental unit.

As the Tenant has vacated the rental unit an order of possession is no longer necessary. The Landlord's request for an order of possession is dismissed.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent and recovery of the filing fee?

### Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on May 06,

2011, and rent is due on the first day of the month in the amount of \$850.00. At the outset of the tenancy the Landlord collected a security deposit of \$425.00 from the Tenant.

The Landlord and Tenant signed a mutual agreement to end the tenancy on October 15, 2011. The mutual agreement also specifies that the Tenant agreed that that Landlord could the security deposit to be used towards the unpaid rent. The Landlord submitted a copy of the mutual agreement signed by both parties on October 03, 2011, into evidence in advance of the hearing. The Landlord testified that the Tenant understood that the rent was still owed for September.

The Landlord confirmed that the Tenant had vacated the rental unit by the time they inspected the suite on October 14, 2011. The Landlord stated that they would like rent for the entire month of October and not just to October 15, 2011.

The Landlord requests a monetary order for \$1,700.00 (\$850.00 x 2) for rent for September and October 2011.

The Landlord has applied for reimbursement of the \$50.00 filing fee for this proceeding.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant agreed to end the tenancy effective October 15, 2011 as the mutual agreement is signed by the Tenant.

I find that the mutual agreement signed by the parties does not waive the unpaid rent. The mutual agreement refers to the unpaid rent and states that the parties agree to use the security deposit "*towards the unpaid rent*". The mutual agreement also states that "*failure to make necessary payments will result in a monetary order*". The mutual agreement ends the tenancy on October 15, 2011 and the Tenant vacated the rental unit prior to October 15. I find that the rent is only owed to October 15, 2011, as there is nothing in the mutual agreement signed by the parties that specifies that a full month's rent for October was agreed to.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement submitted into evidence by the Landlord states that rent is due on the first of the month. I find that the Tenant failed to pay \$850.00 rent for September and \$425.00 rent for October 01 to 15, 2011.

I find that the Landlord has established a monetary claim of \$1,275.00 for outstanding rent.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$1,325.00.

I order that the Landlord retain the security deposit (\$425.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$900.00**.

#### Conclusion

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$900.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: November 02, 2011.

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Residential Tenancy Branch