



# 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 for an order of possession, a monetary order for unpaid rent and the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

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 14, 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)

The Landlord testified that the Tenant moved out of the rental unit on October 31, 2011. 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, and an order to retain the security deposit?

### Background and Evidence

The signed tenancy agreement and rent subsidy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on December 01, 2010, and rent and utilities are due on the first day of the month. The rent subsidy agreement signed by the parties, states that the Tenant is to pay \$893.00 each month, comprised of \$853.00 rent and \$40.00 utilities

(cable). The Tenant paid the Landlord a security deposit of \$591.00 on December 01, 2010.

The Landlord testified that the Tenant has been in arrears with her rent and utilities since August 2011. The Landlord states that the Tenant issued an NSF cheque to them for August 2011 rent and pursuant to the tenancy agreement she owes a \$25.00 late fee for August 2011. The Landlord states that the Tenant is in arrears for \$335.00 for August rent, \$335.00 for September rent, and \$853.00 for October 2011 rent, for a total rent arrears of \$1,523.00. The Landlord states that the Tenant also owes utilities, pursuant to the tenancy agreement, in the amount of \$120.00, which represents \$40.00 per month for cable for three months August to September 2011.

The Landlord testified that the Tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door at 11:00 A.M. on October 03, 2011.

The Landlord stated that the Tenant received the Notice and advised her that she would be moving out. The Landlord stated that the Tenant did not pay the outstanding rent and did not move out within ten days of being served with the Notice. The Landlord filed an Application for Dispute Resolution on October 13, 2011, which they served on the Tenant by registered mail on October 14, 2011. The Landlord testified that they also served the Tenant by registered mail on October 18, 2011 with their evidence, including detailed calculations from their account ledger showing the rent and utility arrears and the NSF fee owed by the Tenant. The Landlord provided copies of their registered mail receipts and tracking evidence for both October 14 and 18, 2011.

The Landlord testified that the Tenant remained in the rental unit until she moved out on October 31, 2011.

The Landlord requests a monetary order for \$1,668.00 for outstanding rent for August, September and October 2011, the NSF fee for the August rent cheque, and the outstanding utilities (cable) for three months. The Landlord has applied to keep all or part of the security deposit of \$591.00 towards the unpaid rent.

The Landlord has also 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 has moved out of the rental unit on October 31, 2011 and the Landlord has possession of the rental unit.

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 rent and utilities in full for August (\$335.00 + \$40.00), September (\$335.00 + \$40.00), and October 2011 (\$853.00 + \$40.00) and did not vacate the rental unit within 10 days of service of the Notice. I also find that the Tenant owes the Landlord an NSF fee (\$25.00) for the August rent.

I find that the Landlord has established a monetary claim of \$1,668.00 for rent, utilities, and an NSF fee.

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 \$1,718.00

I order that the Landlord retain the security deposit (\$591.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,127.00**

#### 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 **\$1,127.00**. 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 15, 2011.

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Residential Tenancy Branch