



# 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 the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The landlord identified one tenant in filing the application on October 25, 2011. The landlord testified that the tenant was personally served with the hearing documents on October 27, 2011 by a neighbour. The landlord served the tenant with an amended application and the landlord's evidence by registered mail sent November 7, 2011 to the rental unit. On November 12 or 13, 2011 the landlord attended the rental unit, found it vacant, and noted that there was no mail for the tenant at the rental unit. The landlord provided a written statement of the neighbour and a copy of the registered mail receipt as proof of service upon the tenant.

I was satisfied the tenant identified on the landlord's original application was sufficiently identified and served with the application and I proceeded to hear from the landlord without the tenant present.

In amending the application the landlord sought to add two additional respondents. I have declined to add those other respondents to this decision, or the Order that accompanies it, as the names that appear on the amended application do not match the names that appear on the written tenancy agreement.

As the landlord has regained possession of the rental unit an Order of Possession is no longer required and I do not provide one with this decision. The remainder of this decision pertains to the landlord's monetary claims only.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent? If so, what is the amount the landlord is entitled to recover?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of rent owed to the landlord?

### Background and Evidence

A co-tenancy commenced February 15, 2011 for a fixed term of one year. The tenants were required to pay rent of \$1,775.00 on the 1<sup>st</sup> day of every month and paid an \$885.00 security deposit. The written tenancy agreement provides that starting August 15, 2011 the rent would be increased to \$1,975.00 per month.

The tenants failed to pay rent for August or September 2011 and on September 9, 2011 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating the tenants failed to pay \$1,975.00 for August and \$1,975.00 for September 2011. The Notice was sent to the tenant via registered mail on September 17, 2011. The tenants paid \$1,500.00 towards the arrears in September 2011 although the landlord was uncertain as to what date exactly. The tenants paid another \$400.00 in October 2011 for which the landlord issued a receipt on October 17, 2011.

In filing this application the landlord requested recovery of \$4,830.00 which he calculated as unpaid rent for September 2011 and October 2011 and \$880.00 for a pet deposit. The landlord explained that pets were not permitted but the tenants brought a pet into the house.

In filing the amended application the landlord requested retention of the security deposit.

Documentation provided in support of the landlord's claims included copies of: the tenancy agreement; the Notice; the October 17, 2011 receipt; and registered mail receipts.

### Analysis

Upon review of the tenancy agreement, I find the landlord was entitled to collect rent of \$1,775.00 from the tenants during the first year of the tenancy under the Act. The Act provides limitations upon rent increases. Rent cannot be increased in the first year of tenancy under the Act. Nor can parties agree to contract out of the requirements of the Act. Therefore, the increase to \$1,975.00 per month violates the Act and is not enforceable.

I was satisfied the Notice to End Tenancy was sent to the tenant via registered mail on September 17, 2011; thus, it is deemed to be received five days later under section 90 of the Act. Accordingly, the effective date of the Notice was automatically changed to read October 2, 2011 under section 53 of the Act.

In light of the above, I find the tenancy ended October 2, 2011 and since the tenant was still in possession of the rental unit in October 2011 the landlord is entitled to recover rent for the month of October 2011.

Taking into account the partial payments made by the tenants I find the landlord is entitled to recover, under the Act, the following amounts from the tenant:

August 2011 rent	\$ 1,775.00
September 2011 rent	1,775.00
October 2011 rent	1,775.00
Less: partial payments (\$1,500.00 + \$400.00)	<u>(1,900.00)</u>
Unpaid rent recoverable by landlord	\$ 3,425.00

I deny the landlord's request for payment of a pet deposit as the tenancy has ended. However, I award the filing fee to the landlord and I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the unpaid rent. Accordingly, I provide the landlord with a Monetary Order in the net amount of \$2,590.00 after adding the filing fee and deducting the security deposit.

### Conclusion

The landlord is authorized to retain the security deposit and has been provided a Monetary Order in the net amount of \$2,590.00 to serve upon the tenant.

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 17, 2011.

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Residential Tenancy Branch