

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This is an application filed by the Landlord for a monetary order for unpaid rent, to keep all or part of the security deposit and recover the cost of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

### Background and Evidence

This Tenancy began on October 1, 2010 on a fixed term tenancy for 1 year until October 1, 2011 as shown in the submitted copy of the signed tenancy agreement. The monthly rent was \$1,400.00 payable each month. A security deposit of \$700.00 was paid on September 15, 2010.

The Landlord states that he served the Tenants with the notice of hearing package on October 6, 2010 by registered mail and has submitted a copy of the Canada Post Registered Mail Receipt as evidence.

At the beginning of the hearing the Landlord amended his claim to state that he was only seeking \$1,400.00 for the unpaid September 2011 rent. The Tenant confirms in her direct testimony that the \$1,400.00 September 2011 rent was owed to the Landlord.

The Landlord states that although he applied to keep the \$700.00 security deposit, he already applied it to previous rent arrears with the permission of the Tenant. The Tenant disputes this stating that no permission was given and that the only arrears are for September 2011 rent. The Landlord states that he had verbal permission.

### Analysis

As both parties have attended the hearing and have given direct testimony on the Landlord's claims, I am satisfied that the Tenant has been properly served with the notice of hearing package.

I am satisfied that the Landlord has established a claim for \$1,400.00 in rent owed for September 2011. The Tenant acknowledged in both her documentary and direct evidence that the rent was unpaid. As such, this portion of the Landlord's claim is granted.

The Landlord's claim to keep the security deposit is not established. The Landlord stated that he applied the \$700.00 security deposit against previous rent arrears with permission from the Tenants, yet he applied for permission to keep it in his dispute. The Tenant has disputed giving permission to the Landlord to retain the security deposit. The onus or burden of proof in a claim falls to the applicant. In this case, the Landlord has failed to provide any supporting evidence that permission was given. The Landlord has failed to provide any evidence of previous rent arrears. This portion of the Landlord's claim is dismissed without leave to reapply.

The Landlord has established a total monetary claim of \$1,400.00. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$700.00 security deposit in partial satisfaction of this claim. I grant the Landlord a monetary order under section 67 for the balance due of \$750.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord is granted a monetary order for \$750.00.  
The Landlord may retain the security deposit.

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: December 16, 2011.

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Residential Tenancy Branch