



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, CNR, MNR, MNSD, FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent, and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim. The tenant applied to cancel the notice to end tenancy and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the landlord testified that one of the tenants named on her application had moved out and had paid all her dues. At the request of the landlord, this tenant's name was removed from the paperwork for this proceeding.

During the hearing the respondent indicated that she would be moving out on September 15, 2012. Accordingly, an order of possession will be granted to the landlord for this date. Therefore this hearing only dealt with the landlord's application for a monetary order.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The landlord and tenant entered into a tenancy agreement on April 01, 2012. The rent is \$850.00 per month due on the first of each month. The landlord filed a copy of the tenancy agreement which contains a clause requiring the tenant to pay a late fee of \$25.00 for rent paid after the first of each month.

The landlord testified that the tenant did not pay full rent for August and on August 02, 2012 the landlord served the tenant with a ten day notice to end tenancy. The tenant stated that on August 07, at 7:00p.m., in the presence of a witness, she placed the balance of rent owed in cash (\$425.00), into an envelope and deposited the envelope in the mail slot of the manager's office. The tenant filed a witness statement confirming this.

The landlord stated that she did not receive the tenant's rent. The landlord also stated that she lives on site and the tenant could have given the rent to her directly that evening at her residence or the next morning in the office. The tenant stated that she did not know the apartment number that the manager resided in.

The landlord also added that she and/or her assistant are on call after office hours and would have met the tenant if she had called to notify them that she was paying her rent. The tenant stated that she did not know the phone number of the office.

The landlord stated that the tenant owes \$425.00 for August plus \$25.00 for the late fee. Regarding rent for September, the tenant stated that she is moving out by September 15 and therefore has paid for half the month. The landlord stated that the tenant did not give notice and is currently still occupying the rental unit, thereby making it unlikely for the unit to be rerented immediately after September 15. The landlord is claiming the balance of \$425.00 for September plus \$25.00 for the late fee.

### **Analysis**

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy for unpaid rent, on August 02, 2012 and states that she paid rent on August 07, by depositing it in the mail slot. Based on the testimony of both parties, I accept the evidence of the landlord that she did not receive rent in cash through the mail slot.

I find that the tenant had options to hand over her rent to the landlord in person, but chose to deposit it into a mail slot which is not guaranteed to reach the landlord. The tenant also testified that she was aware that the janitors, security and other personnel may have had access to the office.

I find that the landlord has established a claim of \$850.00 for unpaid rent and \$50.00 for late fees. Since the landlord has proven her claim she is also entitled to the recovery of the filing fee.

Overall, the landlord has established a claim of \$950.00. I order that the landlord retain the security deposit of \$425.00 in partial satisfaction of the claim, and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$525.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant has not proven her claim and must bear the cost of filing her application.

The tenant has agreed to move out on September 15, 2012. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$525.00**

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: September 13, 2012.

---

Residential Tenancy Branch