



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Scott & Jas Rentals Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      O, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for some unspecified relief and a cross-application by the landlord for an order of possession, a monetary order and an order authorizing him to retain the security deposit in partial satisfaction of the claim. The landlord participated in the conference call hearing, but the tenant did not. The landlord testified that he personally served the tenant with his application for dispute resolution and notice of hearing. I was satisfied that the tenant had notice of the claim made against him and the hearing proceeded in his absence.

The landlord testified that he discovered that the tenant had made a claim against him when he filed his own claim with the Residential Tenancy Branch and they scheduled the matters to be heard together. The landlord stated that he has not been served with a copy of the tenant's application. As the tenant did not serve the landlord with notice of his claim, I dismiss the claim without leave to reapply.

The landlord asked to amend his claim to include claims for the cost of cleaning the suite and the carpet. As the tenant had no notice of this claim, I denied the request to amend the application. The landlord is at liberty to file an application for dispute resolution to claim compensation for these losses.

The landlord testified that the tenant vacated the rental unit on September 11 and withdrew his claim for an order of possession. The hearing proceeded to address the landlord's monetary claim and claim against the security deposit.

### Issues to be Decided

Is the landlord entitled to a monetary order as claimed?  
Should the landlord be authorized to retain the security deposit?

### Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began on June 15, 2013 and ended on September 11, 2013. Monthly rent was set at \$575.00 per month and the landlord collected a \$287.50 security deposit at the outset of the tenancy.

The landlord testified that the tenant paid his rent in the month of August with a cheque which was returned for insufficient funds and further failed to pay rent in the month of September. On September 1, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent and the tenant vacated the rental unit pursuant to the notice. The landlord was able to re-rent the unit on September 23 and seeks to recover the \$575.00 in rental arrears for the month of August and \$422.00 in lost income for the month of September, prorated to the date the unit was re-rented.

The landlord also seeks to recover 2 \$25.00 late payment fees pursuant to the terms of an addendum to the tenancy agreement as well as a \$40.00 NSF fee which was charged to the landlord by his financial institution. The landlord further seeks to recover the \$50.00 filing fee paid to bring this claim.

### Analysis

I accept the landlord's undisputed testimony and I find that the tenant failed to pay rent in the months of August and September. The tenant was required by the terms of the tenancy agreement to pay rent in full on the first day of each month and I find that the landlord is entitled to the claim for rental arrears and lost income for those 2 months as these are losses suffered directly as a result of the tenant's breach of the contract. I award the landlord \$575.00 for the month of August and \$422.00 for the month of September.

I find that the tenant is responsible for two late payment fees totaling \$50.00 and I award the landlord that sum. I further find that the landlord is entitled to recover the NSF charge and I award him \$40.00. I further find that the landlord is entitled to recover the \$50.00 filing fee and I award him that sum.

### Conclusion

In summary, the landlord has been awarded the following:

August rent	\$ 575.00
September lost income	\$ 422.00

August late payment fee	\$ 25.00
September late payment fee	\$ 25.00
NSF charge	\$ 40.00
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$1,137.00</b>

I order the landlord to retain the \$287.50 security deposit in partial satisfaction of the claim and I grant him a monetary order under section 67 for the balance of \$849.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: October 23, 2013

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Residential Tenancy Branch

