



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RELIANCE PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution made by the landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities, to keep all or part of a security and pet damage deposit and to recover the filing fee from the tenant for the cost of this application.

An agent and the building manager along with the tenant appeared for the hearing and no issues with regards to the service of documents under the Residential Tenancy Act (referred to as the Act) were raised by any of the parties.

During the hearing the tenant stated that she had left the rental suite and as a result the landlord's agent withdrew the portion of the application requesting an Order of Possession for unpaid rent or utilities.

Both parties provided affirmed testimony during the hearing and the landlord provided a copy of the notice to end tenancy and the tenancy agreement prior to the hearing taking place.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

Both parties agree that the tenancy started on May 13, 2007 on a month-to-month basis and ended when the tenant left at the end of October, 2013. The tenant paid a security deposit to the landlord in the amount of \$462.50 on April 20, 2007 which the landlord

still retains. Rent was payable by the tenant towards the end of the tenancy in the amount of \$1,075.00 on the first day of each month.

The landlord's agent testified that the tenant had been late paying rent on a number of occasions throughout the tenancy. On October 1, 2013 the tenant failed to pay rent in the amount of \$1,075.00. As a result, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 4, 2013 by posting it on the tenant's door with a witness. The notice to end tenancy was provided as evidence for the hearing and has an effective date of vacancy of October 14, 2013. The landlord testified that the tenant vacated the rental unit at the end of October, 2013 without paying any of the rent and now seeks to recover the October, 2013 rent in the amount of \$1,075.00 including a \$25.00 charge for late payment. However, the tenancy agreement does not contain a clause that the tenant has to pay a late fee for unpaid rent.

The tenant testified that she received the notice to end tenancy for unpaid rent but testified that she did not pay rent because the building was infested with cockroaches and that she had tried to address this with the landlords who failed to do anything about it. However, the tenant failed to provide any evidence relating to the issues she testified to. The tenant testified that she didn't think she was responsible for paying rent because she had thoroughly cleaned the unit and the landlord failed to deal properly with issues related to the rental suite.

### Analysis

Section 26 (1) of the Act states that a tenant must pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act. I find that the reasons presented by the tenant are not reasons under the Act that a tenant has a right to deduct from rent payment.

Section 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice to end tenancy, I find that the contents complied with the requirements of the *Act*.

As a result, I find that the tenant failed to pay the overdue rent or apply to dispute the notice as required by the Act, and therefore the tenant is conclusively presumed to have accepted that the tenancy ended in accordance with the notice. As a result, I find that the landlord is entitled to a Monetary Order for unpaid rent relation to October, 2013 in the amount of \$1,075.00.

Section 7 of the Residential Tenancy Regulation states that a landlord may not charge a late payment of rent fee unless the tenancy agreement provides for that fee. Therefore, I find that the landlord is not entitled to the \$25.00 late payment fee claimed in the application and I dismiss this portion of the landlord's application.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72 (1) of the Act. Therefore, the total amount payable by the tenant to the landlord is \$1,125.00.

According to the Residential Tenancy Branch Interest Calculator, the interest payable by the landlord on the security deposit which the landlord retains is \$11.89 for a total amount \$474.39. As a result, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the landlord is awarded \$650.61.

### Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$650.61**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) 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: November 21, 2013

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Residential Tenancy Branch

