



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail actually received on October 9, 2013, the Tenant did not appear.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, upon what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?
- Is the landlord entitled to retain the security deposit?

### Background and Evidence

This month-to-month tenancy commenced April 22, 2013. The tenant rented the unit with a co-tenant. The monthly rent of \$700.00 including utilities was due on the first day of the month. The tenants paid pro-rated rent for April in the amount of \$160.00.

In June the co-tenant left the rental unit. The landlord's evidence is that a new agreement was made with the tenant effective June 1. They agreed that the monthly rent, including utilities, would be \$450.00 per month, still due on the first day of the month. They also agreed that the security deposit would be \$225.00 and that the tenant would pay the deposit in installments. There was also a \$40.00 credit from the payments made by the tenant and her co-tenant in April and May to be applied to the security deposit.

According to the landlord's records the following payments were made by the tenant towards the June, July, August and September rent (a total of \$1800.00):

July 5	\$200.00
July 19	\$130.00
July 27	\$180.00
August 8	\$195.00
August 12	\$100.00
September 7	\$225.00
 TOTAL	 \$1030.00

In addition the parties agreed that the tenant would be credited the sum of \$300.00 for painting she had done at the rental unit. According to the landlord's figures the arrears of rent as of September 24 were \$470.00

The landlord testified that during the tenancy the tenant paid an additional \$100.00 towards the security deposit making the total deposit held by the landlord \$140.00.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent on September 24,, 2013, by personal service. That document includes information advising the tenant that the notice is cancelled if the tenant paid the arrears of rent within five days. It also advises that the tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The landlord testified that the tenant did neither.

The landlord testified that the tenant had not paid the rent for October and November and as of the date of the hearing the arrears total \$1370.00.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the Tenant.

The landlord claimed late payment fees. However, section 7 of the *Residential Tenancy Regulation* states that a landlord may only charge a late payment fee if the written tenancy agreement provides for that fee. The landlord only filed one page of the first tenancy agreement as part of her evidence. She did not file any part of a tenancy agreement showing that the agreement specifically provided for the late payment fee. Therefore, I must dismiss this part of her claim.

The landlord also claimed the cost of registered mail. The *Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence. This part of the landlord's claim is also dismissed.

I find that the landlord has established a total monetary claim of \$1420.00 comprised of arrears of rent in the amount of \$1370.00 and the \$50.00 fee paid by the landlord for this application. I order that the Landlord retain the deposit of \$140.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$1280.00.

Conclusion

- a. An order of possession effective two days after service on the Tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of \$1280.00 has been granted. If necessary, it may 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 19, 2013

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Residential Tenancy Branch

