



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on January 6, 2014 for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied on January 14, 2014 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Tenant states that on December 31, 2013 the Tenant gave notice to move out of the unit and did so as of February 1, 2013. As the tenancy has ended I find that there is no longer any need to dispute the notice to end tenancy given by the Landlord and I dismiss the Tenant’s application. The Landlord confirmed that she has possession of the unit and no longer requires an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on June 1, 2013. Rent of \$1,400.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$700.00 as a security deposit from the Tenant.

The Landlord states that the Tenant owes unpaid rent of \$350.00 for December 2013 and \$350.00 for January 2013 rent. Upon further questioning, the Landlord states that all of December 2013 rent was paid and that the \$350.00 was owed for November 2013. The Landlord was unable to state with certainty the amounts of rent that had been received for January and then states that she received \$700.00 in January but was only owed \$350.00 for this month. No financial records were supplied by the Landlord. The Tenant states that all rents were paid each month and that no amount of rent is owed. The Tenant provided copies of payments made on behalf of the other two tenants to the Landlord from a ministry. The Landlord does not dispute that the Tenant paid her share of \$700.00 each month. The Tenant asks for return of the security deposit and provided her forwarding address at the hearing.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. The onus of proof is on the party making the claim.

Given the lack of financial records and the conflicting evidence of rental payments from the Landlord and considering the copies of payments made by the ministry to the Landlord, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant owes any rental monies and I therefore dismiss the claim for unpaid rent. As the tenancy has ended and as the Landlord now has the Tenant's forwarding address, I

order the Landlord to return the security deposit of \$700.00 plus zero interest to the Tenant forthwith. Should the Tenant not receive this amount by March 15, 2014, I give the Tenant leave to reapply for return of double the security deposit.

Conclusion

The Landlord's application is dismissed. I order the Landlord to return the security deposit of \$700.00 to the Tenant forthwith.

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: February 21, 2014

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Residential Tenancy Branch

