



# 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 the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord submitted documentary evidence the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 22, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5<sup>th</sup> day after it was mailed.

While the landlord has provided confirmation that the tenant did not claim the registered mail package I find that the act of not claiming the hearing documents is the same as attempting to avoid service.

Based on the testimony and evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing the landlord confirmed that the tenant vacated the rental unit on April 30, 2014. As such, the landlord no longer requires an order of possession and I amend his Application to exclude the matter of possession.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on April 1, 2011 for a month to month tenancy beginning on April 1, 2011 for the monthly rent of \$1,600.00 due on the 1<sup>st</sup> of each month and a security deposit of \$800.00 was paid; and

The landlord testified that during the tenancy the tenant reduced the amount she was paying for rent to \$1,500.00 and that he eventually agreed to allow her to do so.

The landlord provided a copy of a handwritten notice from the tenant dated April 2, 2014 stating that she would be vacating the rental unit on April 30, 2014. The landlord submits that the tenant did not pay rent for the month of April or May 2014 but that he was able to re-rent the unit beginning May 15, 2014.

The landlord also submits that the tenant failed to pay water utilities in the amount of \$1,186.34. The landlord has provided into evidence utility bills and invoices confirming these amounts.

### Analysis

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me that the tenant had informed the landlord of a failure, on the landlord's part, to comply with a material term of the tenancy I find the tenant was required to comply with Section 45(1) if she intended to end the tenancy.

As the tenant's notice to end tenancy was written by the tenant on April 2, 2014 I find the earliest day she could end the tenancy was May 31, 2014 to be compliant with Section 45(1). As such, I find the tenant is responsible for the payment of rent until May 31, 2014 subject only to the landlord's obligation to mitigate any losses.

As the landlord was able to find a new tenant for May 15, 2014 I find the tenant is responsible for the payment of rent until May 15, 2014. I am satisfied the landlord took reasonable steps to mitigate his losses.

In addition, based on the undisputed testimony of the landlord I find the tenant has failed to pay rent for the month of April 2014 and for the utilities as claimed by the landlord.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,486.34** comprised of \$2,250.00 rent owed; \$1,186.34 utilities owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$800.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,686.34**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 06, 2014

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Residential Tenancy Branch

