



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Anson Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:11 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on April 6, 2014. She also testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on April 17, 2014. She entered into written evidence copies of the Canada Post Customer Receipts containing the Canada Post Tracking Numbers for both of the above registered mailings. She also entered into written evidence a copy of the Canada Post Online Tracking System Record to show that the hearing package was successfully delivered to the tenant on April 29, 2014. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the above documents on the fifth business day after their registered mailings.

At the hearing, the landlord withdrew the application to end this tenancy for unpaid rent and for the issuance of an Order of Possession as the tenant vacated the rental unit by May 7, 2014. The landlord's application for an Order of Possession is withdrawn.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the

monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This one-year fixed term tenancy commenced on January 21, 2014. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord, the tenancy was to continue until January 31, 2015. Monthly rent was set at \$2,600.00. The landlord continues to hold the tenant's \$1,300.00 security deposit paid on January 17, 2014, the date the tenant signed the Agreement.

The 10 Day Notice stated that as of April 6, 2014, \$2,600.00 in outstanding rent was owing from April 2014. The landlord gave sworn testimony that the only payment made to the landlord by the tenant following the issuance of the 10 Day Notice was a May 22, 2014 payment of \$900.00. The landlord testified that the tenant has not provided any forwarding address after abandoning the rental unit on or about May 7, 2014. The landlord testified that she commenced placing advertisements in a community newspaper and on a popular rental website shortly after the landlord took possession of the rental unit. As of the date of this hearing, the rental unit remains vacant.

The landlord's application for a monetary award of \$7,800.00 included unpaid rent of \$2,600.00 for April 2014, and an anticipated loss of \$2,600.00 for each of May and June 2014. At the hearing, the landlord reduced the amount of her requested monetary award to \$700.00 plus authorization to retain the tenant's \$1,300.00 security deposit.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of her fixed term Agreement because she vacated the rental premises prior to the January 31, 2015 date specified in that Agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenant's failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that after April 1, 2014, the tenant's only payment to the landlord was \$900.00 on May 22, 2014. The tenant did not pay any rent for May 2014, the last month of her fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises since the tenant abandoned the rental unit. As such,

I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss.

Based on the undisputed sworn testimony before me, I find that the landlord has demonstrated entitlement to a monetary award of the \$2,000.00 claimed for unpaid rent owing from April and May 2014. Under these circumstances, I allow the landlord to retain the tenant's security deposit of \$1,300.00, plus applicable interest. No interest is payable over this period. I also allow the landlord a monetary award of \$700.00 in unpaid rent and to recover \$50.00 of the filing fee for this application from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee from the tenant, and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid Rent Owing from Tenancy	\$2,000.00
Less Security Deposit	-1,300.00
Recovery of a Portion of the Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$750.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application to end this tenancy and obtain an Order of Possession is withdrawn.

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 10, 2014

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Residential Tenancy Branch

