



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR OPB MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for an order of possession due to the tenant breaching a fixed term tenancy agreement, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlord attended the teleconference hearing. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence was considered. The landlord testified that the Notice of Hearing, Application and documentary evidence was served on the tenant on April 15, 2014 by ExpressPost and a tracking number was submitted in evidence. The landlord stated that the mail package was addressed to the tenant at the rental unit address and that the tenant was residing in the rental unit at the time the package was mailed to her. The landlord stated that mail package was returned on May 14, 2014 and was marked as "refused" by Canada Post. The online tracking information on the Canada Post website supports the testimony of the landlord. I find the tenant was sufficiently served in accordance with the *Act*. I note that refusal of service on the part of the tenant does not constitute grounds for a Review.

### Preliminary and Procedural Matters

At the outset of the hearing, the landlord testified that the tenant vacated the rental unit on April 16, 2014, since filing her application. As a result, the landlord requested to withdraw her request for an order of possession as the tenant had already returned possession of the rental unit by vacating the rental unit on April 16, 2014.

During the hearing, the landlord requested to reduce her monetary claim from \$1,200.00 to \$600.00 as the tenant vacated the rental unit on April 16, 2014, however, failed to pay \$600.00

of the \$1,200.00 April 2014 rent. The landlord stated that she was able to re-rent the rental unit effective May 1, 2014 so she was no longer seeking loss of May 2014 rent.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement between the parties began October 15, 2013 and was scheduled to revert to a month to month, periodic tenancy after October 31, 2014. Monthly rent in the amount \$1,200.00 was due on the first day of each month during the tenancy. The tenant paid a \$600.00 security deposit at the start of the tenancy which the landlord continues to hold.

The landlord applied for dispute resolution on April 14, 2014 after she issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on the tenant dated March 31, 2014. The effective vacancy date of the 10 Day Notice was April 11, 2014 and the tenant vacated on April 16, 2014, according to the landlord.

The landlord is seeking \$600.00 for half of unpaid April 2014 rent. The landlord stated that the tenant only paid \$600.00 of the \$1,200.00 rent due April 1, 2014.

#### Analysis

Based on the documentary evidence, undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

**Monetary claim of landlord** – The landlord testified that the tenant failed to pay \$600.00 in rent for April 2014, having only received half of the \$1,200.00 April 2014 rent in the amount of \$600.00. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, **I find** the tenant breached section 26 of the *Act* by failing to pay \$600.00 of the \$1,200.00 April 2014 rent due April 1, 2014. Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$600.00** as described above.

As the landlord's application had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the landlord has established a total monetary claim of \$650.00 comprised of \$600.00 in unpaid rent, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, which the

landlord continues to hold, in the amount of \$600.00, which has accrued \$0.00 in interest to date. **I ORDER** the landlord to retain the tenant's full security deposit of \$600.00 in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$50.00**. Should the landlord wish to enforce the monetary order, the monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

#### Conclusion

The landlord has established a total monetary claim of \$650.00 as indicated above. The landlord has been ordered to retain the tenant's full security deposit of \$600.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance due of \$50.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 4, 2014

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Residential Tenancy Branch

