



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW DECISION

Dispute Codes      OPR, MNR

### Introduction

This was a hearing with respect to the landlord's application for an order for possession and monetary order. The matter originally proceed by way of a Direct Request, which is an *ex parte* proceeding in which a decision is made based upon the landlord's application and written submissions.. In a decision dated February 21, 2014. The arbitrator granted the landlord an order for possession and a monetary order for unpaid rent in the amount of \$650.00. The tenant made an Application for Review Consideration of the original decision and orders on the basis that the decision may have been obtained by fraud. By decision dated March 12, 2014 the tenant's review application was granted, the original decision was suspended and a new hearing was ordered to be conducted by conference call on May 14, 2014. I was appointed to conduct the hearing. The named landlord and the tenant attended the new hearing. Since the Review Consideration Decision was made on March 12<sup>th</sup>, the tenant has moved out of the rental property and the only matter to be considered on this application is the landlord's claim for a monetary order.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and if so, in what amount?

### Background and Evidence

The rental property is a house in Williams Lake. Beginning on January 15, 2013 the tenant rented the upstairs suite in the hose at a monthly rent of \$1,100.00. The tenant testified that she paid a \$550.00 security deposit at the start of the tenancy. The landlord occupied the basement suite in the house. In July, 2013 the landlord moved out of the basement suite. The landlord and the tenant agreed that the tenant would move into the basement suite and pay monthly rent of \$650.00 and the tenant's family members would remain in the upstairs suite pursuant to a new and separate tenancy agreement. The tenant occupied the basement suite and paid monthly rent until December when no rent was paid. The landlord testified that she served the tenant with

a 10 day Notice to End Tenancy for unpaid rent on December 30, 2013 by placing a copy in the tenant's mail box.

The tenant said that she did not pay rent for December because there was a leak or a flood in the rental unit that lasted until December 20<sup>th</sup>. The tenant testified that she gave the landlord two money orders, each in the amount of \$500.00 on February 15<sup>th</sup>, intended as payment towards January and February rent. She submitted copies of the money orders as evidence. The landlord acknowledged that she received them. The tenant said that she sent a further money order in the amount of \$300.00 on February 27<sup>th</sup> that was left with the upstairs tenant. The tenant said that she also paid March rent in the amount of \$650.00 by money order. The landlord said that it was possible that the tenant did send another money order, but when she spoke to the upstairs tenant he told her that he could not find it.

The tenant testified that she moved out of the rental unit on April 4<sup>th</sup>. The landlord said that the tenant was there until late in April and did not move all of her belongings out of the unit until May. She said that in late April she went to the unit and found the tenant's dog in the rental unit in a dog crate or kennel. The tenant said that it was actually the upstairs tenants' dog that was later given to the pound. She said that she was unaware that the dog was left in the rental unit in April.

The landlord said that the tenant did not pay a security deposit, but the tenant testified that she paid the landlord \$1,100.00, being a full month's rent for the upstairs suite and she moved in on January 15<sup>th</sup>, so half of that payment represented the security deposit. The landlord said she relied on receipts that said the tenant still owed the security deposit, but she acknowledged that the tenant may have been given a receipt for a one month payment at the start of the tenancy.

### Analysis

The parties acknowledged that commencing July 1, 2013 there was a tenancy of the basement suite in the rental property with a monthly rent of \$650.00. The tenant testified that she moved out on April 4<sup>th</sup>, but I find that she did not fully vacate the rental unit until later in April and she is therefore responsible for rent for the full month of April. Because the tenancy has ended and the tenant was present at the review hearing, I find that it is appropriate to amend the landlord's claim to include a claim for unpaid rent to the end of the tenancy. The tenant did not pay rent for December, 2013. She complained that there was flooding, but she did not have grounds to withhold the payment of rent. If the tenant wants to pursue a claim for loss of quiet enjoyment for some part of the month of December, she will have to file her own application for dispute resolution.

I find that the landlord is entitled to the following amounts:

- December rent: \$650.00
- January rent (\$500 paid) \$150.00
- February rent (\$500 paid) \$150.00
- March rent \$650.00
- April rent: \$650.00

The tenant has not provided proof that she paid an additional \$300.00 on February 27<sup>th</sup> or that the landlord received it and it has not been shown that \$650.00 was paid for March so I allow the landlord's claims for these amounts. If money orders for these amounts are delivered to the landlord then the landlord must credit the tenant with the payments after they have been received and deduct them from the amount awarded by this decision..

I do not award any amount for May rent. The landlord has not submitted evidence to show that the rental unit was occupied in May and has not provided any evidence to show efforts taken to re-rent the unit. The original decision and orders dated February 21, 2014 are set aside. The total monetary award granted to the landlord is the sum of \$2,250.00. Because this matter commenced as a Direct Request Proceeding, I decline to award a filing fee. I find that the tenant paid a security deposit of \$550.00 in January, 2013.

### Conclusion

I order that the landlord retain the deposit in partial satisfaction of the monetary award and I grant the landlord an order under section 67 for the balance of \$1,700.00. This order may be registered in the Small Claims Court 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: May 14, 2014

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Residential Tenancy Branch

