



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, MNDC, MNSD, FF  
CNR, MNDC, FF

### Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenants for cancellation of a notice to end tenancy for unpaid rent / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

Tenant "SK" attended the hearing and gave affirmed testimony. The tenant testified that he was served with the landlord's application for dispute resolution and notice of hearing (the "hearing package"). The tenant also testified that he served his hearing package on the landlord. Despite all of the foregoing, the landlord did not appear at the hearing. Included in the landlord's documentary submission is a letter dated July 04, 2014, in which the landlord states, in part, as follows:

I will be unable to attend the hearing on July 30 / 2014 as I am out of town. I requested a date change which initially was agreed to by [the tenant] but he later changed his mind after he sign[ed] the proposed changes.

### Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which the tenant testified began in February 2012. Monthly is due and payable in advance on the first day of each month. At the start of tenancy the monthly rent was \$900.00. Effective February 01, 2014, the monthly rent was increased to \$920.00. A security deposit of \$450.00 was collected. There is no move-in condition inspection report in evidence.

Arising from rent which was unpaid when due on June 01, 2014, the landlord issued a 10 day notice to end tenancy for unpaid rent dated June 09, 2014. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. Subsequently, the tenants made no further payment toward rent and they vacated the unit on June 30, 2014. The tenant testified that he did not provide the landlord with his forwarding address. There is no move-out condition inspection report in evidence.

In addition to recovery of the \$50.00 filing fee, compensation sought by the tenants comprises \$4,050.00, and is calculated on the basis of \$150.00 per month over a period of 27 months. The tenant claims that entitlement to this compensation arises from miscellaneous deficiencies in the unit during the term of tenancy. Documentary evidence in support of his claim includes, but is not limited to, a local government "property use inspection report" dated June 04, 2014, photographs taken within the unit, and 2 letters from the tenant to the landlord dated, respectively, October 31, 2013 and January 17, 2014; both letters set out various concerns about the condition of the unit.

### Analysis

As the tenancy ended subsequent to the filing of both applications, I find that the landlord's application for an order of possession and the tenants' application for cancellation of a notice to end tenancy for unpaid rent are both withdrawn.

Based on the documentary evidence submitted by both parties, and the affirmed / undisputed testimony of the tenant, the respective aspects of the applications and my findings around each are set out below.

### **LANDLORD**

#### **\$920.00:** *unpaid rent for June 2014*

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, in part as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant testified that he paid no rent for June 2014, even after the landlord's service of the 10 day notice to end tenancy for unpaid rent dated June 09, 2014. As earlier

noted, the tenants vacated the unit on June 30, 2014. In the result, I find that the landlord has established entitlement to the full amount of unpaid rent claimed.

*\$920.00: loss of rental income July 2014*

In the absence of any testimony from the landlord, or documentary evidence of a written tenancy agreement, or documentary evidence concerning the rental status of the unit after June 30, 2014, or documentary evidence of efforts to mitigate the loss of rental income, this aspect of the application is hereby dismissed without leave to reapply.

**Amount of Gross Entitlement: \$920.00**

Section 72 of the Act speaks to **Director's orders: fees and monetary orders**, in part as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all the above, I hereby order that the landlord retain the security deposit of **\$450.00**, resulting in the **amount of net entitlement** of **\$470.00** (\$920.00 - \$450.00).

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**TENANT**

*\$4,050.00: (\$150.00 / month x 27 months) compensation for alleged unit deficiencies*

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In consideration of the “property use inspection report,” photographs taken within the unit, and the affirmed / undisputed testimony of the tenant, I find that the tenant has established entitlement to a claim in the limited amount of \$470.00. This amount is calculated on the basis of \$58.75 per month, over the 8 month period commencing from the date of the tenant’s letter to the landlord which is October 31, 2013, up to the end of tenancy on June 30, 2014 ( $\$58.75 \times 8$ ).

**Entitlement: \$470.00**

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The respective applications to recover the filing fee are both hereby dismissed.  
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I find that the respective entitlements to compensation of \$470.00 offset each other, with the result that neither party has established entitlement to issuance of a monetary order.

Conclusion

I find that the respective entitlements to compensation offset each other.

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: July 30, 2014

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Residential Tenancy Branch

