



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, 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 and the tenant.

Prior to the hearing the tenant submitted a written statement that states he vacated the rental unit on July 3, 2014. At the outset of the hearing the landlord confirmed the tenant did vacate the rental unit. However the parties both testified that the tenant vacated the rental unit on July 5, 2014. As such, the landlord no longer needs an order of possession and I amend the landlord's 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; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the tenancy began on May 1, 2013 as a month to month tenancy for the monthly rent of \$980.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated June 4, 2014 with an effective vacancy date of June 14, 2014 due to unpaid rent in the amount of \$980.00.

The landlord testified that he served the tenant personally with the 10 Day Notice on June 14, 2014. While the tenant was not certain that was the day that he received it he did acknowledge that it was likely on June 14, 2014.

The tenant testified that he had lost his job and was, at the time, unable to pay the landlord any rent. He also testified that he had difficulty in receiving Employment Insurance and it was not until the end of June that he was able to obtain new employment.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the testimony of both parties I find the landlord served the tenant with the 10 Day Notice on June 14, 2014 and as such, the tenant was required to vacate the rental unit by June 28, 2014.

Based on the testimony of both parties I find the tenant did not pay rent for the month of June 2014 in the amount of \$980.00 and as such, I find the landlord is entitled to receive this amount.

Further as the tenant retained possession of the rental unit until July 5, 2014 I find the landlord is entitled to the payment of rent for overholding until that date, based on the per diem rate of \$920.00 per month divided by 31 days or \$29.68 per day. For the five days of overholding the total amount is \$148.40

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,178.40** comprised of \$980.00 rent owed; \$148.40 overholding 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 \$500.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$678.40**.

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: August 21, 2014

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Residential Tenancy Branch

