



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR, MNSD, FF  
DRI, CNR, MNDC, OLC, PSF, LRE

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession for unpaid rent or utilities. The Landlord also applied for a Monetary Order for unpaid rent, to keep the Tenant’s security deposit, and to recover the filing fee. The Tenant applied for the following issues:

- To cancel the notice to end tenancy for unpaid rent or utilities
- For money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement;
- For the Landlord to comply with the Act, regulation or tenancy agreement
- To dispute an additional rent increase
- For the Landlord to provide services or facilities required by law
- To suspend or set conditions on the Landlord’s right to enter the rental suite

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing. There was no appearance for the Tenant during the duration of the hearing despite the Tenant’s Application which was scheduled to be heard for the same date as the Landlord’s Application. Furthermore, the Landlord’s agent provided the Canada Post tracking number during the hearing, which was noted in the file, as evidence that the Landlord’s Application and notice of this hearing was served to the Tenant by registered mail in accordance with Section 89(1) (c) of the Act.

The Canada Post website indicates that the Tenant signed for the documents on August 8, 2014. As the Tenant failed to appear for the hearing and present the merits of her Application, I dismiss the Tenant’s Application in its entirety. As a result, I continued the hearing and considered the undisputed evidence of the Landlord’s agent as well as the written evidence in this Decision as follows.

### Preliminary Matters

The Landlord's agent explained that the Tenant had vacated the rental suite on August 16, 2014 and therefore the Landlord no longer required an Order of Possession. As a result, I dismissed this portion of the Landlord's Application.

The Landlord's agent explained that he was only seeking to recover unpaid rent for three months, as documented in the details section of the Landlord's Application, and withdrew the Application claiming for unpaid utilities. As a result, the Landlord's Application was amended accordingly pursuant to Section 64(3) (c) of the Act.

### Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for July, August and September, 2014 and if so, how much?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

The Landlord's agent testified that this tenancy started on February 1, 2012 for a fixed term of six months which then continued on a month to month basis. The Landlord submitted a written tenancy agreement signed by the Tenant; however, it fails to disclose essential information. As a result, the Landlord's agent testified that rent had been established with the Tenant at the start of the tenancy in the amount of \$900.00 payable on the first of every month. The Tenant paid a \$450.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord's agent testified that in February, 2014 the Landlord informed the Tenant that the rent would be increasing to \$30.00. Despite the Tenant not being given a proper Notice of Rent Increase, the Tenant began to pay the extra \$30.00 from June, 2013 onwards.

The Landlord's claim is that the Tenant failed to pay rent for July, 2014. As a result, the Tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") in the amount of \$930.00 with an effective vacancy date of July 17, 2014. The Notice was provided in written evidence.

The Landlord's agent further submitted that the Tenant also failed to pay for August, 2014 rent because the Landlord was alleged to not be dealing with mold problems. The

Landlord's agent testified that the Tenant vacated the rental suite on August 16, 2014 and has not been able to re-rent the suite for September, 2014.

As a result, the Landlord now seeks a total of three months unpaid rent from the Tenant in the amount of \$2,790.00 (\$930 x 3).

### Analysis

Section 26(1) of the Act states that a Tenant must pay rent when it is due under a tenancy agreement **whether or not** a Landlord complies with the Act.

Based on the undisputed testimony and written evidence presented by the Landlord's agent, I accept that the Tenant failed to pay rent for the months of July and August, 2014, the months being a period of time the Tenant was occupying the rental suite.

The next issue to be determined is the amount of rent to be awarded to the Landlord. Part 3 of the Act and Policy Guideline 37 to the Act explain the requirements a Landlord has to follow in order to affect a legal rent increase. In this case, the Landlord's agent confirmed that the Landlord had not imposed a proper legal rent increase when the rent was increased by the Landlord from \$900.00 to \$930.00, as this was done through a verbal agreement and voluntary payment by the Tenant for the increased amount. This is contrary to the Legislation and therefore, I am unable to consider the Landlord's claim for unpaid rent in the amount of \$930.00 for each month.

Based on the foregoing, I find that the Landlord is only entitled to \$900.00 which was the initial amount of rent payable that was agreed between the parties at the start of the tenancy. Therefore the Landlord would only be entitled to \$1,800.00 for unpaid rent for the months of July and August, 2014.

In considering the Landlord's claim for loss of rent for September, 2014, I have taken into consideration Policy Guideline 3 to the Act which states in part that "In a month to month tenancy, if the tenancy is ended by the Landlord for nonpayment of rent, the Landlord may recover any loss of rent suffered for the next month as a notice given by the Tenant during the month would not end the tenancy until the subsequent month."

Based on the foregoing, I also award the Landlord loss of rent for August, 2014. Therefore the total amount awarded to the Landlord in unpaid rent is **\$2,700.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to

Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$2,750.00.

As the Landlord already holds the Tenant's **\$450.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded **\$2,300.00** in unpaid rent.

### Conclusion

For the reasons set out above, I hereby grant a Monetary Order in the amount of **\$2,300.00** in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

As the Tenant has moved out, the Landlord's Application for an Order of Possession and the Tenant's Application is dismissed.

However, the Tenant is at liberty to recover the extra amount of rent paid as a result of the Landlord not complying with the Act. This can be done through negotiation with the Landlord or through an Application with the Residential Tenancy Branch.

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: September 12, 2014

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Residential Tenancy Branch

