



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING SOCIETIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### 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 a Monetary Order for: damages to the rental unit; unpaid rent; to keep the Tenants’ security deposit; and, to recover the filing fee for the cost of making this Application.

An agent for the Landlord appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence prior to the hearing. There was no appearance for the Tenants during the thirty minute duration of the hearing and no submission of written evidence by them prior to the hearing.

### Preliminary Issues

As the Tenants failed to appear for the hearing, I focused my attention to the service of the Application and the Notice of Hearing documents by the Landlord to the Tenants.

The Landlord’s agent testified that the Tenants had been served the Notice of Hearing documents by registered mail on May 22, 2014 to the address that had been provided by the Tenants on the Condition Inspection Report at the end of tenancy as their forwarding address. The Landlord provided a copy of the Canada Post tracking receipt as evidence for this method of service and the Condition Inspection Report showing the Tenants’ forwarding address. The Landlord’s agent testified that the documents were returned to him as unclaimed.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds alone for a review of this decision. As a result, based on the undisputed oral and written evidence in relation to the service of documents for this hearing, I find that the Landlord served the Tenant in accordance with Section 89(1) (c)

of the *Residential Tenancy Act* (the “Act”) and that the Tenants were deemed served these documents on May 27, 2014 pursuant to Section 90(a) of the Act.

The Landlord's agent made some preliminary submissions in relation to his Application for damages to the rental unit and decided to withdraw this portion of the Application to reconsider this aspect of the claim. Therefore, I have not considered the Landlord's claim for damages to the rental suite, but do give the Landlord leave to re-apply for this portion.

As a result, I carefully considered the undisputed affirmed testimony of the Landlord's agent and the written evidence of the Landlord in this decision as follows.

#### Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent?
- Is the Landlord allowed to keep the Tenants' security deposit in partial satisfaction of the Landlord's claim?

#### Background and Evidence

The Landlord's agent testified to the following details relating to his claim.

This tenancy for a subsidised rental unit began on September 1, 2009 for a fixed term. The tenancy was then renewed in a new written tenancy agreement which began on January 1, 2013 on a month to month basis. The Tenants paid a \$523.00 security deposit at the start of the tenancy in September, 2009. The rent contribution payable by the Tenants at the end of the tenancy was in the amount of \$813.00 on the first day of each month.

The Tenants habitually paid rent late and in partial amounts and by the end of March, 2014 the Tenants were in rental arrears in the amount of **\$226.00**.

On April 1, 2014 the Tenants also failed to pay their monthly rent in the amount of **\$813.00**. On the same day the Landlord received a call from one of the Tenants, who informed the Landlord that they would be vacating the rental suite at the end of April, 2014. The Landlord requested written notice of their intention to vacate in accordance with the Act.

As a result, the Tenant provided written notice on April 4, 2014 to end the tenancy for the end of April, 2014.

The Landlord explained to the Tenants that as they had not provided proper written notice to end the tenancy they would be liable for the Landlord's losses until the rental suite could be re-rented out. The Landlord also served the Tenant with a notice to end tenancy for unpaid rent on April 17, 2014 in the amount of \$1,039.00 which was outstanding at this point in time. The notice to end tenancy was provided in written evidence.

The Tenants failed to fully vacate the rental unit on April 30, 2014 as per their written notice and took another six days to slowly move their possessions out of their unit to their new residence which was located a couple of blocks away.

The rental suite was not fully vacated until May 6, 2014 at which point the Tenants and the Landlord completed a move out Condition Inspection of the suite and the Tenants provided written consent on the Condition Inspection Report for the Landlord to keep their security deposit.

The Landlord was able to re-rent the suite for June, 2014 and lost May, 2014 rent. However, even though the Landlord knew he was entitled to May, 2014 rent, he only seeks to recover the rent associated with the six days that the Tenant over held the rental suite, for an amount of **\$150.00**. The Landlord offered the Tenant a settlement for the losses incurred during the tenancy but received no communication in relation to this.

As a result, the Landlord claims a total loss of unpaid rent in the amount of **\$1,189.00** (226 + 813 + 150).

### Analysis

Even though the Landlord was given written permission by the Tenants to keep their security deposit at the end of the tenancy pursuant to Section 38(4) (a) of the Act, I find that the Landlord made the Application to keep the Tenants' security deposit within the time limits stipulated by Section 38(1) of the Act.

Policy Guideline 3 to the Act explains that if a Tenant remains in possession of the premises (overholds), the Tenant will be liable to pay occupation rent on a *per diem* basis until the Landlord recovers possession of the premises. In certain circumstances, a Tenant may be liable to compensate a Landlord for loss of rent.

Based on the foregoing, I accept the Landlord's written and oral testimony that the Tenant over held the rental suite for six days and I find that the Landlord is entitled to recover lost rent on a *per diem* basis in the claimed amount of \$150.00.

I also accept the Landlord written evidence that the Tenant failed to pay rent for the month of April, 2014, as supported by the notice to end tenancy and that the Tenants were in rental arrears before April, 2014 in the amount of \$226.00. Therefore, I find that the Landlord is entitled to unpaid rent in the amount of \$1,189.00 claimed by the Landlord.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$1,239.00.

As the Landlord already holds the Tenants' \$523.00 security deposit, and no interest is payable on this amount, 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 \$716.00.

### Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$716.00**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment in accordance with the order.

The Landlord's Application for damages to the rental unit is dismissed **with** leave to re-apply.

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 24, 2014

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Residential Tenancy Branch

