



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPRIET  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company and the tenant attended the hearing and the landlord called one witness. The parties and the witness each gave affirmed testimony. The landlord has also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenant. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the outset of the hearing the parties advised that the tenant has moved out of the rental unit and the landlord withdraws the application for an order of possession.

### Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on June 18, 2012 and expired on June 30, 2013 and then reverted to a month-to-month tenancy. Rent in the amount of \$960.00 per month was payable at the commencement of the tenancy which was raised to \$912.31 during the tenancy, and is due on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$430.00 which is still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlord's agent further testified that the tenant failed to pay rent when it was due for the month of August, 2014 and on August 6, 2014 the landlord caused a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to be served by posting it to the door of the rental unit. A copy of both pages of the notice has been provided which is dated August 6, 2014 containing an effective date of vacancy of August 19, 2014. The notice states that the tenant failed to pay rent in the amount of \$912.31 that was due August 1, 2014. The tenancy agreement provides for a late fee or returned cheque fee in the amount of \$25.00, and the tenant has not paid any rent since the issuance of the notice. The tenant had been paying rent by way of a pre-authorized debit transaction and the tenant put a stop payment on August's rent. A copy of a tenant ledger has also been provided.

The landlord's agent also testified that a move-in condition inspection report was completed at the commencement of the tenancy. The tenant vacated the rental unit on August 31, 2014 at which time a move-out condition inspection report was completed by the parties and the tenant returned the keys to the rental unit. The parties had several telephone conversations and around the beginning of August, 2014 the tenant advised he had a prospect of a new tenant and the landlord's agent told him that a move-out condition inspection had to be booked. The landlord was calling the tenant almost every day in an attempt to get the rent paid, but the tenant did not commit to a date that he was moving out and the tenant had requested that the move-out condition inspection take place on August 31, 2014. The landlord agreed and suggested 11:00 a.m. but the tenant advised that noon would work better for him, and the landlord agreed.

The landlord's agent also testified that the landlord has not made an application to keep any part of the security deposit.

The landlord claims \$912.37 for unpaid rent and \$25.00 for a late fee, and recovery of the filing fee for the cost of the application.

The landlord's witness testified that she is the site-manager of the rental complex. The witness and the tenant were both present for the move-out condition inspection, and some of the tenant's furniture was still in the rental unit, such as a coffee table, a sofa and there was an air conditioner in the closet.

The witness also testified that when new tenants wish to rent a unit, the landlord's agents always tells them to apply on-line and if they don't, there's nothing the landlord's agents can do about that. The witness denies telling a prospective tenant that the rental unit was not available.

The tenant testified that he informed the landlord's agents by telephone that he was going to show the suite and rent it out as soon as possible so that he could mitigate the amount of rent he would have to pay for August, hoping that the rental unit would be re-rented by August 15, 2014 and the landlord could keep the tenant's security deposit for the other half of the rent owed. The tenant showed the rental unit to about 30 people and was confused that none had been accepted by the landlord, so he called the

landlord's agent to ask and was told that he had to pay the rent first. The tenant took that to mean that no new tenants would be accepted until the tenant paid the rent.

The tenant also testified that he actually moved out of the rental unit on August 4, 2014 and the landlord knew that because the landlord's agents had seen the tenant's furniture in the hallway, and was actually quite irate about it. On or about August 15, 2014, the tenant took a prospective tenant to the landlord's office who was told that the rental unit was not available. The person seemed polite, acceptable and responsible and the tenant did not understand why the landlord's agents would respond that way, so he called again. The landlord's agent responded that the tenant had to pay rent first before any application from another tenant would be entertained. The tenant testified that he made it abundantly clear to the landlord that he was looking for a new tenant.

The rental unit was finally re-rented to a new tenant found by the tenant effective September 1, 2014. That new tenant requested that the sofa and coffee table remain in the rental unit and that's why they remained at move-out. The landlord's agent during the move-out told the tenant that he would have to pay \$300.00 for leaving them there, and dismissed the tenant's request to call the new tenant to confirm that, stating that she had no time to make calls. The tenant agrees that the keys for the rental unit were returned to the landlord's agents during the move-out condition inspection.

The tenant is prepared to pay to the landlord rent to the effective date of the landlord's notice to end the tenancy, being August 19, 2014 because the landlord refused to consider a new tenant prior to then. He also testified that he rents another unit from the landlord, and paid the landlord an additional \$26.00 in cash but is not sure when or which suite it was to apply to.

The tenant also testified that the landlord wanted to complete the move-out condition inspection at 11:00 a.m. on August 31, 2014 and the tenant asked for noon, but did not suggest any other dates or time. Conversations between the parties toward the end of the month were just to arrange the move-out condition inspection and the landlord didn't ask when the tenant was moving out because the landlord's agents knew that the tenant had already moved out; they saw that, and knew the tenant was making a great effort to rent suite.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due. In this case, the tenant claims that the landlord ought not to collect any rent beyond the effective date of the landlord's notice to end the tenancy because the landlord did not do what was reasonable to mitigate any loss by refusing to accept a new applicant until the rent was paid. There is no provision in the *Act* that requires a landlord to accept a tenant found by a current tenant. The tenant states that he actually moved out on August 4, 2014, however, if the tenant had given sufficient notice, that notice would not take effect until September 30, 2014 because rent is payable on the 1<sup>st</sup> day of each month.

The tenant also testified that an additional \$26.00 was paid to the landlord in cash but does not know which unit it was for, and therefore, I find that the tenant has failed to establish that any portion of the rent for August, 2014 was paid.

In the circumstances, I find that the landlord has established a monetary claim as against the tenant for a full month or rent, or \$912.31. I further accept that the tenancy agreement contains a provision for a late fee of \$25.00 and I find that the landlord is also entitled to that.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

### Conclusion

For the reasons set out above, the landlord's application for an order of possession is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$987.31.

This order is final and binding and may be enforced.

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: October 24, 2014

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Residential Tenancy Branch

