



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent and for a monetary award for unpaid rent. The request for a monetary award for “damage or loss under the Act...” was withdrawn.

The tenants vacated the premises on October 29, 2014. The landlord has moved in. An order of possession is no longer required.

### Issue(s) to be Decided

What amount of rent do the tenants owe?

### Background and Evidence

The rental unit is a three or four bedroom home. The tenancy started in January 2014 for a one year fixed term at a monthly rent of \$2000.00. The landlord holds a \$1000.00 security deposit.

The landlord testifies that the tenants paid January to April 2014 rent in full but failed to pay any rent since, but for a \$1500.00 payment for August rent. He calculates that the total owing is \$10,500.00. In support of his claim the landlord adduced extracts of Interac e-transfer deposits made to his BMO account. He claims these were the extent of payments.

The landlord also provided a printout of his BMO account from December 2013 to September 2014 to corroborate the deposit history. Unfortunately the landlord chose not to provide the tenants with a copy of that bank account statement, considering it to be private. As in all common law countries it is a fundamental principle that the parties

are entitled to know the case they are obliged to meet. That means that if a party proposes to tender evidence in support of his case, the other side has a right to see it too. I therefore must decline to consider the landlord's BMO account print out. I do accept as his sworn testimony, that his extract of payments represents the bank record.

For future reference, parties often provide copies of bank records with the irrelevant data redacted.

The parties agreed that all rent payments were made by Interac e-transfer.

The tenant Mr. S. says the landlord has failed to account for two additional payments and submits a screen printout of the tenants' TD bank account. The printout indicates that on May 9<sup>th</sup> an Interac e-transfer of \$1500.00 was made to the landlord's email address. The "STATUS" of the transfer indicates "Recipient Deposited Transfer." Again on July 19<sup>th</sup>, the TD bank account printout indicates another \$1500.00 sent by Interac e-transfer to the landlord's email address and again the "STATUS" shows "Recipient Deposited Transfer."

The tenant Mr. S. says that taking these two payments into account, he and Ms. S. owe only \$7500.00 in back rent.

In response the landlord says he did not receive the May 9<sup>th</sup> payment and that the July 19<sup>th</sup> payment was not deposited until August 5<sup>th</sup> and is shown on the tenants' bank records as well, resulting in a single \$1500.00 payment being shown as having been paid twice.

It is, I think, agreed that the landlord, upon receipt of the email informing him of an awaiting transfer could choose to direct that money into any bank account he might particularize to Interac, not just the BMO account. The landlord testifies that he has but the one account and used is exclusively for this rental business.

Equally, the tenant could have provided a print out of the TD bank account showing the withdrawals. That would have corroborated that the money left the account *via* an Interac e-transfer and was not somehow cancelled or re-deposited.

### Analysis

Both gentlemen gave straightforward, believable testimony. I have no basis upon which to make any determination detracting from the credibility of either.

The tenants' bank records indicating "Recipient Deposited Transfer" tips the scale in my view. I find that the May 9<sup>th</sup> and July 19<sup>th</sup> payments were made and that the total rent owed is \$7500.00.

The landlord is entitled to a monetary award of \$7500.00 plus the \$100.00 filing fee. I authorize the landlord to retain the \$1000.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenants jointly and severally for the remainder of \$6600.00.

### Conclusion

The landlord's application is allowed in part.

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: November 20, 2014

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Residential Tenancy Branch

