



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

The landlord originally applied through the Direct Request process for an order of possession and a monetary order for unpaid rent. I considered the evidence of the landlord and the tenant and determined that the matter was not appropriate for the Direct Request process. In an interim decision dated August 7, 2014, I ordered that the application proceed as a participatory hearing, and the matter was scheduled for a teleconference hearing to take place on October 9, 2014.

Due to technical difficulties the teleconference hearing did not proceed on October 9, 2014, and was rescheduled for hearing on October 14, 2014. On that date, the landlord called in to the teleconference hearing and stated that the tenant had not paid rent or definitely vacated the rental unit. I determined it was appropriate to amend the landlord's monetary claim to include unpaid rent and lost revenue for August, September and October 2014.

The tenant called in several minutes after the hearing commenced. He confirmed that he had vacated the rental unit. I found that the tenancy had therefore ended and it was not necessary for me to consider the portion of the landlord's application regarding an order of possession.

I informed the tenant that the landlord's monetary application was amended to include unpaid rent and lost revenue for August, September and October 2014, and the tenant requested an adjournment to properly respond to the amended claim. I granted the adjournment and issued an interim decision. In the interim decision I wrote as follows:

The landlord's monetary claim is amended to include unpaid rent and lost revenue for August, September and October 2014, in addition to unpaid rent of \$20 for July 2014.

The hearing reconvened on December 2, 2014. Both the landlord and the tenant participated in the teleconference hearing on that date.

The landlord submitted further evidence regarding damage to the rental unit. I informed the landlord that I would not at that time consider a further amendment to her application to include any claim for damage to the rental unit.

#### Preliminary Issue – Tenant's Conduct

In the reconvened hearing the tenant repeatedly and aggressively questioned my conduct of the hearing. The tenant was not satisfied that I had addressed the landlord's failure to properly serve him with the first notice of reconvened hearing. The tenant also questioned the amendment of the landlord's application. I explained to the tenant that the remedy for the landlord's late service of notice of the reconvened hearing was an adjournment, which I granted. I also directed the tenant to the section of my interim decision, reproduced above, where I clearly set out the details of the amended application.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and lost revenue?

#### Background and Evidence

The tenancy began on November 1, 2013, with monthly rent of \$1150 payable in advance on the first day of each month. On July 17, 2014 the landlord served the tenant with a notice to end tenancy for unpaid rent. The notice indicated that the tenant had failed to pay rent of \$1150 due on July 1, 2014.

On July 28, 2014 the landlord applied through the direct request process for an order of possession and a monetary order. In the application the landlord indicated that the tenant still owed \$20 in unpaid rent for July 2014. On July 29, 2014 the tenant submitted evidence that he had an agreement with the landlord to pay the rent in weekly installments of \$287.50, and therefore his rent for July 2014 was paid in full. Upon consideration of the tenant's evidence, I determined that the landlord's application was not appropriate for the direct request process, and I ordered that the matter proceed as a participatory hearing.

### *Landlord's Evidence*

The landlord stated that in mid-August 2014 she and the tenant made an agreement that the tenant would not have to pay any rent for August 2014 and the tenant would vacate the rental unit by the end of the month. The landlord stated that she received emails from the tenant on September 2, 2014 and September 6, 2014, in which the tenant indicated that he was ill and he had not yet moved out of the rental unit. The landlord stated that as of September 22, 2014 the tenant still had possessions in the rental unit and he had not returned the keys to the unit. The landlord stated that she was not aware that the tenant had vacated the unit until October 14, 2014, when the tenant stated in the hearing that he vacated the unit.

The landlord stated that because the tenant did not move out as agreed upon by August 31, 2014, he breached their agreement and should be responsible for rent for August. Further, because the tenant failed to confirm until October 14, 2014 that he had fully vacated the unit, the landlord has claimed rent for September and October 2014.

### *Tenant's Response*

The tenant submitted evidence to show that on July 27, 2014 he paid the landlord the balance of \$20 in rent for July 2014. The tenant stated that he vacated the rental unit on September 3, 2014. The tenant acknowledged that he did not return the keys, and he had left his bed in the unit but intended to return and remove his bed. The tenant stated that the landlord knew that the tenant was out of the unit, and the only rent he should have to pay is prorated rent for September 1 to 3, 2014.

### Analysis

Upon consideration of the evidence and on a balance of probabilities, I find as follows.

I accept the evidence of the tenant that he paid the landlord the outstanding balance of \$20 for July 2014 rent.

I find that the tenant failed to clearly communicate to the landlord that he had fully vacated the rental unit by September 3, 2014. The tenant did not return the keys and did not retrieve all of his personal belongings at that time. I find it reasonable that when the landlord attended the unit on September 22, 2014 and found that some of the tenant's furniture was still in the unit, she concluded that the tenant had not fully vacated the unit. I therefore find that the tenant breached his agreement to vacate the rental unit by August 31, 2014, and the landlord is entitled to rent for August 2014. I further find

that due to the tenant's failure to communicate until October 14, 2014 whether he had fully vacated the unit, he is also responsible for rent and lost revenue for September and October 2014.

Conclusion

I grant the landlord an order under section 67 for the balance due of \$3450. This order may be filed in the Small Claims Court and 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: December 17, 2014

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Residential Tenancy Branch

