



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing the parties confirmed that the tenant moved out of the rental unit before February 1, 2015. I therefore did not consider the portion of the landlord's application regarding an order of possession.

Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began in October 2013, with rent in the amount of \$1000 payable in advance on the first day of each month. At the outset of the tenancy, the tenant paid the landlord the first and last month's rent, plus a security deposit of \$500.

The tenant failed to pay \$100 of the rent for December 2014 and paid no rent for January 2015, and on January 11, 2015 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The effective date of the notice was January 24, 2015. The tenant did not apply to cancel the notice, and on January 21, 2015 the landlord applied for an order of possession and a monetary order for unpaid rent.

### *Landlord's Claim*

At the outset of the hearing the landlord stated that the tenant moved out before February 1, 2015, so she was not claiming rent for February. After the tenant stated that she had paid the landlord the first and last month's rent as well as a security deposit at the outset of the tenancy, I asked the landlord whether she considered the "last month's rent" to be applied to January 2015 or February 2015, and the landlord stated that it was for February 2015. The landlord has claimed \$1100 in unpaid rent for the balance of December 2014 and for January 2015.

I asked the landlord when she became aware that the tenant was going to move out, but the landlord did not provide a clear response.

The landlord stated that in the summer of 2014 the tenant agreed to put the Hydro for the rental unit into her own name, so the landlord had her name removed from the account.

### *Tenant's Response*

The tenant stated that the landlord had agreed to let the tenant pay all of the outstanding rent on January 15, 2015. However, on January 10, 2015 the power in the rental unit was cut off. The tenant stated that she never agreed to put the Hydro in her name. The tenant stated that she withheld the rent because there was no power, and she moved out of the rental unit on January 26, 2015.

### Analysis

Upon consideration of the evidence and on a balance of probabilities, I find as follows. The tenant owes the landlord \$100 in unpaid rent for December 2014 and \$1000 in unpaid rent for January 2015.

The tenant contacted the landlord on January 10, 2015 about the lack of power, and on January 11, 2015 the landlord issued the notice to end tenancy for unpaid rent. I find it likely that the landlord was aware by January 11, 2015 that the tenant was intending to move out of the rental unit. In any case, the effective date of the notice to end tenancy was January 24, 2015 and the tenant did not apply to cancel the notice to end tenancy. The landlord did not provide any evidence that she took steps to attempt to re-rent the unit, and therefore the landlord is not entitled to lost revenue for February 2015.

I find that the landlord has established a claim for \$1100 in unpaid rent. As her application was partly successful, she is also entitled to recovery of the \$50 filing fee.

In the hearing I explained to the parties that under the Act a landlord may not collect the last month's rent at the outset of a tenancy, and such payment must be considered part of the security deposit. I therefore find that the landlord holds in trust a security deposit of \$1500.

### Conclusion

The landlord is entitled to \$1150. I order that the landlord retain this amount from the security deposit in full satisfaction of the award and I grant the tenant an order under for the balance of the security deposit, in the amount of \$350. 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: February 10, 2015

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Residential Tenancy Branch

