



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPR, MNR, MNDC, MNDS, FF  
Tenant: CNR

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing the parties agreed the tenant vacated the rental unit. The tenant testified that she had moved out on May 3, 2015. The landlord was unsure as to what date the tenant moved out and thought it was between May 5, 2015 and May 7, 2015.

As a result the tenant withdrew her Application for Dispute Resolution and the landlord confirmed she is no longer in need of an order of possession I have amended the landlord's Application to exclude the matter of possession.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; to retain all or a part of the security deposit; and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution, pursuant to Section 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on September 1, 2014 as a month to month tenancy for the monthly rent of \$850.00 due on the 1<sup>st</sup> of each month with a security deposit of \$425.00 paid.

The tenant submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on April 7, 2015 with an effective vacancy date of April 17, 2015 due to unpaid rent in the amount of \$970.00.

The landlord submits the tenant failed to pay rent in full for the months of February 2015 (\$120.00); April 2015 (\$850.00); and May 2015 (850.00). The tenant submits that she was unable to pay the full amount of rent for the month of February 2015; that she was waiting for a student loan to be received prior to the payment of rent for the month of April 2015; and that she was not going to pay rent for the month of May 2015 because she moved on May 3, 2015.

### Analysis

Based on the testimony of the tenant I find she failed to pay rent in full for the months of February and April 2015. I therefore find the landlord is entitled to compensation in the amount of \$970.00 for those two months.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In the case before me the tenant acknowledged received of the 10 Day Notice to End Tenancy on April 7, 2015 and she submitted an Application for Dispute Resolution on April 9, 2015. On April 13, 2015 the hearing date of May 22, 2015 was set to hear the tenant's Application.

As such, I find the tenant intended to seek to have the Notice cancelled and have the tenancy continue. The tenant provided no explanation as to what happened between April 13, 2015 and May 3, 2015 that caused her to change her mind and move out of the rental unit.

As a result, I find that indications from the tenant to the landlord were such that the tenant's actions prevented the landlord from making attempts to re-rent the rental unit to a new tenant. If the tenant had moved out of the rental unit in accordance with the 10

Day Notice or even before the end of April 2015 the landlord would have had an opportunity to attempt to re-rent the unit.

However, as the tenant chose to remain in the rental unit until after the day in the month that rent was due and the tenant had no authority, under the *Act* to withhold any or all of the rent for the month of May 2015, I find that, pursuant to Section 26 of the *Act*, the tenant owes the landlord rent for the month of May 2015.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,870.00** comprised of \$1,820.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$425.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,445.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 22, 2015

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Residential Tenancy Branch

