



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order of Possession for unpaid rent or utilities, a Monetary Order for unpaid rent, for authorization to keep all or part of the security deposit, and to recover the filing fee.

The Landlord attended the teleconference hearing. During the hearing the Landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The Landlord testified that the Notice of Hearing was served on the Tenant by registered mail on November 25, 2014. The tracking number and receipt were provided in evidence. Section 90 of the *Act* provides that documents served in that manner are deemed served five days later. I accept the Landlord's undisputed testimony that she served the Tenant that the Tenant was sufficiently served as of November 30, 2014.

### Preliminary and Procedural Matters

At the outset of the hearing, the Landlord testified that the Tenant vacated the rental unit on September 30, 2014. As a result, the Landlord requested to withdraw her request for an Order of Possession as the Tenant had already given up possession of the rental unit by vacating the rental unit on September 30, 2014.

### Issues to be Decided

- Is the Landlord entitled to a Monetary Order under the *Act*, and if so, in what amount?

- What should happen to the Tenant's security deposit under the *Act*?

### Background and Evidence

A month to month tenancy agreement between the parties began on or about October 1, 2013 and ended on September 30, 2014 when the Tenant vacated the rental unit. Monthly rent in the amount \$1,550.00 was due on the first day of each month during the tenancy. The Tenant paid a \$775.00 security deposit at the start of the tenancy which the Landlord continues to hold.

The parties agreed to a mutual agreement to end tenancy dated September 9, 2014, indicating the tenancy was to end on October 31, 2014. The Landlord applied for dispute resolution on November 22, 2014.

The Tenant failed to pay rent for October 2014 and instead vacated the rental unit on September 30, 2014, a month before the mutually agreed upon effective date of the end of the tenancy.

The Landlord sought a Monetary Order in the amount of \$1,600.00 comprised of the rent for October 2014 as well as the \$50.00 filing fee.

The Landlord confirmed that she received the Tenant's forwarding address at the time they reached the mutual agreement to end tenancy. She testified that she did not immediately apply for dispute resolution as she believed the Tenant would honour her obligation to pay her rent for October 2014. Consequently, the Landlord did not apply for Dispute Resolution within the 15 days prescribed under section 38

### Analysis

Based on the documentary evidence, undisputed testimony of the Landlord, and on the balance of probabilities, I find the following.

The Landlord filed for dispute resolution on November 22, 2015. The effective date of the mutual agreement to end tenancy is October 31, 2015 and I find that October 31, 2015 is the date the tenancy ended.

Section 38 of the *Residential Tenancy Act* provides as follows:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the Landlord receives the Tenant's forwarding address in writing,

the Landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

....

(6) If a Landlord does not comply with subsection (1), the Landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlord's obligations are expressed in mandatory terms. As the Landlord applied after the 15 days required under the *Act*, I must Order, pursuant to section 38(6)(b) that the Landlord repay the Tenant double the amount of the security deposit, namely \$1,550.00.

The Landlord claimed rent for the month of October 2014. The mutual agreement to end tenancy which was introduced in evidence clearly indicates the parties intended the tenancy to end on October 31, 2014.

Based on the above, I find the Tenant breached section 26 of the *Act* by failing to pay rent for October 2014 and consequently the Landlord has suffered a loss of rent in the amount of \$1,550.00. The Tenant must repay the Landlord the sum of \$1,550.00.

As the Landlord owes the Tenant \$1,550.0 and the Tenant owes the Landlord \$1,550.00 for rent for the month of October 2014, the result of the foregoing is that the amounts are to be set off against another such that I make no Monetary Order.

The Landlord, having experienced divided success, is not entitled to recover the \$50.00 filing fee.

Conclusion

The Landlord failed to apply for dispute resolution within 15 days of the end of the tenancy as required by section 38; as such, the Landlord must return double the security deposit. The Tenant failed to pay rent for the month of October 2014; consequently, the Tenant owes the Landlord the sum of \$1,550.00 for lost rent for October 2014. As these amounts are equal, and are to be set off against one another, I make no Monetary Order. The Landlord, having experienced divided success is not entitled to recover the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 16, 2015

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Residential Tenancy Branch

