



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing the Landlord stated that the Tenants were no longer in the unit and that he had possession of the unit.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: The tenancy started on October 1, 2014 for a fixed term to end October 1, 2015. Rent of \$2,700.00 was payable monthly on the first day of

each month. At the outset of the tenancy the Landlord collected \$1,350.00 as a security deposit and \$1,350.00 as a pet deposit. The Tenant failed to pay rent for June 2015 and on June 14, 2015 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). No copy of this Notice was provided as evidence by either Party. The Tenant did not pay any rent for July and August 2015. On August 8, 2015 the Landlord removed the Tenant's belongings from the unit and denied the Tenant access to the unit.

The Landlord states that the Tenant failed to pay all the rent for May 2015 and that the Tenant owes \$1,200.00 in unpaid rent. The Landlord claims unpaid rent from May to August 2015 inclusive.

The Tenant states that all the rent was paid for May 2015 and that the Tenant was unable to provide evidence of this online transfer or any of the other evidence she had collected for this hearing as the evidence was in the unit and she has no access to her belongings including her computer. The Tenant states that rent was not paid as the unit has mold and the Landlord failed to make repairs.

The Landlord states that he has receipts at home for all the rent payments made.

### Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence of unpaid rent for June and July 2015 and as the Tenant's reasons for not paying this rent are not valid, I find that the Landlord has substantiated an entitlement to **\$5,400.00** for these months. As the Landlord provided no supporting evidence such as accounting documents and considering the Tenant's credible evidence, I find that the Landlord has not on a balance of probabilities substantiated its claim for May 2015 rent. Although the Landlord acted to take possession of the unit and at the hearing this was considered an act to end the right to rental monies following the date of possession, upon further

reflection I find that as the Landlord acted to obtain possession of the unit after the required payment of the full month's rent the Tenant is therefore obliged to pay rent for all of August 2015. The Landlord is therefore entitled to **\$2,700.00** for August 2015. As the tenancy ended and the matter of the notice to end tenancy is no longer relevant, I dismiss the Tenant's application. The Tenant remains at liberty to make an application for compensation in relation to the acts of the Landlord to take possession of the unit and the Tenant's belongings.

As no evidence was taken in relation to the claims for either the utilities or the lost wages, I dismiss these claims with leave to reapply. As the Landlord's application has met some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$8,200.00**. Deducting the combined security and pet deposit plus zero interest of **\$2,700.00** (\$1,350.00 + 1,350.00) from the entitlement leaves **\$5,500.00** owed by the Tenants to the Landlord.

#### Conclusion

I Order the Landlord to retain security and pet deposit plus interest of \$2,750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$5,500.00**. If necessary, 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: August 19, 2015

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Residential Tenancy Branch

