



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPN, OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and tenant's notice pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1127 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenant with the dispute resolution package on 23 July 2015. The landlord testified that this package included the evidence before me. The landlord testified that this service was witnessed by an RCMP officer. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

### Preliminary Issue – Scope of Application

At the commencement of the hearing, the landlord indicated that the tenant vacated the rental unit on or about 4 September 2015.

As the tenant has returned possession of the rental unit to the landlord, there is no need for me to consider the landlord's claims seeking an order of possession as the issue is now moot. As such, I decline to proceed with that portion of the landlord's application.

At the hearing, the landlord informed me that his application contained a math error. As well, the landlord informed me that the tenant had not paid any amount towards her use and occupation of the rental unit for August. The landlord asked me to amend his claim to include a request for a monetary order in the amount of \$5,000.00 on the following basis:

<b>Item</b>	<b>Amount</b>
December Rent	\$450.00
January Rent	900.00
January Payment	-1,150.00
February Rent	900.00
March Rent	900.00
April Rent	900.00
April Payment	-500.00
May Rent	900.00
May Payment	-1,000.00
June Rent	900.00
July Rent	900.00
August Rent	900.00
<b>Total Monetary Order Sought</b>	<b>\$5,000.00</b>

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In determining whether or not to allow an amendment, I must consider the prejudice to the responding party.

As the tenant reasonably ought to have known that she would owe for her use and occupation of the rental unit if she remained there for August, I have allowed the amendment as there is no undue prejudice to the tenant. Further, as the landlord included a ledger that set out the detailed amount of payments and rent accrued, there is no undue prejudice to the tenant in allowing the landlord to amend his application to correct for the math error.

The landlord's application is amended.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 14 December 2014. The landlord and tenant entered into a tenancy agreement on 15 December 2014. The tenancy agreement set out that monthly rent of \$900.00 was due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$450.00, which was collected at the beginning of the tenancy. The landlord testified that the tenant vacated the rental unit on or about 4 September 2015.

A cotenant is a party to the tenancy agreement. The landlord testified that the cotenant ceased to live at the rental unit in January 2015. The landlord did not name the cotenant as a party to this application.

On 16 June 2015, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice). The 10 Day Notice was personally served to the tenant on 16 June 2015. The 10 Day Notice set out that it was given as the tenant had failed to pay rent and arrears totaling \$2,300.00 (this notice is subject to the same math error that the landlord made in this application). The 10 Day Notice set out an effective date of 26 June 2015.

The landlord testified that he has not received any rent payments since May 2015. The landlord testified that the tenant has \$5,000.00 in rent arrears. The landlord testified that he is not aware of any reason that would entitle the tenant to deduct any amount from rent.

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 26 June 2015, the date the tenancy ended.

The tenant owed rent for each month she occupied the rental unit. The landlord testified that the tenant had rent arrears for the period 14 December 2014 to 26 June 2015 in the amount of \$4,100.00. There is no evidence before me that indicates the tenant was entitled to deduct any amount from rent. I find, on balance of probabilities, that the landlord has proven his entitlement to the unpaid rent amounts totaling \$4,100.00.

Pursuant to section 57 of the Act, a landlord may make a claim for compensation from an overholding tenant. The tenant did not pay for the use and occupancy of the rental unit for August 2015. As the tenant occupied the unit beyond the termination of the tenancy, the landlord is entitled to compensation for the tenant's use and occupancy. The landlord is entitled to a monetary order in the amount of \$900.00 for the tenant's use of the rental unit for August 2015.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,600.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Rent Arrears	\$4,100.00
Section 57 Compensation	900.00
Offset Security Deposit Amount	-450.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$4,600.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: September 16, 2015

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Residential Tenancy Branch

