



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, FF, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to recover the filing fee and for "Other" issues.

The Landlord and Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed that she had received the Landlord's original Application made on August 12, 2015 and the amended Application made on October 1, 2015. The Tenant confirmed that she had retrieved these documents because they were placed into the rental unit mail box.

Although Section 89 of the *Residential Tenancy Act* (the "Act") does not allow the service of an Application by placing into the mail box, the Tenant confirmed receipt of these documents and explained that she was ready to respond to the Landlord's amended Application for his monetary claim as she had now moved out of the rental unit. Therefore, I determined that the Tenant had been put on notice for this hearing and had been served sufficiently served pursuant to Section 71(2) (b) of the Act.

### Preliminary Issues

The Tenant confirmed that she had vacated the rental unit on September 7, 2015 and that she had not provided the Landlord with a forwarding address in writing. The Landlord confirmed that he had received possession of the rental unit at the end of September 2015 although the Tenant had not returned the keys. Therefore, I dismissed the Landlord's request for an Order of Possession.

The parties confirmed that they had appeared at this hearing to deal with the Landlord's monetary claim for unpaid rent. The Landlord stated that he also wanted to claim for the Tenant's security deposit and for damages to the rental unit in this hearing which is

what the “other” issue on his Application related to. However, the Landlord was informed that I was only able to deal with the monetary claim he had made in the amount of \$1,250.00 for unpaid rent in this hearing. Despite the Landlord claiming that he had photographic evidence of damages to the rental unit, I determined that the Tenant had not been put on sufficient notice of a damages claim by the Landlord since he had only applied to deal with unpaid rent in his Application.

However, I informed the Landlord that he was at liberty to pursue a separate Application against the Tenant for damages to the rental unit. I also informed the Landlord that I would consider his request to keep the Tenant's security deposit under the authority provided to me by the Act.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present relevant evidence and make submissions to me. I have considered the evidence provided by the parties but I have only documented that evidence which I relied upon to make findings in this decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for September 2015?
- Is the Landlord entitled to keep the Tenant's security deposit in part in satisfaction of his claim for unpaid rent?

#### Background and Evidence

The parties agreed that this tenancy started six years ago. However, in June 2014 the parties signed a written tenancy agreement which shows a start date of June 1, 2014 and an end of tenancy date of June 30, 2015. The tenancy agreement states that at the end of the fixed term the tenancy ends and the Tenant is required to vacate the rental unit. The Tenant testified that she signed this agreement under duress but acknowledged that she had initialed that part of the tenancy agreement which required her to vacate at the end of the fixed term tenancy.

The parties agreed that rent under the agreement was payable in the amount of \$1,250.00 which was a reduced amount from that documented on the tenancy agreement. The parties agreed that the Tenant paid \$625.00 as a security deposit at the start of the tenancy which the Landlord still retains. The parties also agreed that after the fixed term tenancy ended, the Landlord continued to accept rent from the Tenant for July and August 2015.

The Tenant testified that at the end of August 2015 she verbally informed the Landlord that she would be vacating the rental unit at some point in September 2015 and that the Landlord agreed to this because he wanted to move into the property himself.

The Tenant testified that she moved out on September 7, 2015 and should not be responsible for September 2015 rent because the Landlord allowed her to vacate the rental unit. The Tenant confirmed that she had not given written notice to the Landlord to end the tenancy.

The Landlord testified that he was happy that the Tenant was moving out but at no time did he allow the Tenant not to pay rent and that she was still responsible for paying for September 2015 rent. The Landlord testified that he tried several times to explain to the Tenant the requirement for her to give written notice but none was provided to him.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act, unless the tenant has a right to withhold or deduct rent.

In determining the Landlord's monetary claim for unpaid rent, I make the following findings. The Tenant provided insufficient evidence that the fixed term tenancy agreement signed by the Tenant and the Landlord was signed by the Tenant under duress. Therefore, I find the parties were engaged into a fixed term tenancy agreement that was due to expire on June 30, 2015.

However, the Landlord accepted rent from the Tenant after the fixed term tenancy had ended. Therefore, pursuant to Section 44(3) of the Act, I find the parties renewed the tenancy on a month to month basis.

Sections 45(1) and (4) of the Act provides that a tenant wanting to end a month to month tenancy is required to provide the landlord with one clear rental months of notice and that the notice must be in writing. In this case, I find that the Tenant failed to give written notice to end the tenancy which was contrary to the Act. Therefore, the Landlord is entitled to unpaid rent for September 2015 in the amount of **\$1,250.00** claimed.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,300.00**.

Section 72(2) (b) allows me to offset any amounts awarded to the landlord from a tenant's security deposit. Therefore, as the Landlord already holds **\$625.00** in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$675.00**. Copies of this order are attached to the Landlord's copy of this decision. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlord's written instructions.

### Conclusion

The Tenant failed to end the tenancy in accordance with the Act. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of \$675.00 of unpaid rent which includes the filing fee. As the Tenant has now moved out, the Landlord's Application for an Order of Possession is dismissed.

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: October 21, 2015

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Residential Tenancy Branch

