



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Preliminary Issues

The Landlord testified that at the time he filed his application he had not yet suffered the losses for unpaid utilities and property management fees for cleaning which is why there was no evidence submitted to support those items.

Based on the above, I declined to hear the claims for the gas bill and property management fees as they were filed prematurely, pursuant to section 59(5)(a) of the *Act*. The Landlord has leave to reapply for these items.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on September 15, 2015 seeking to obtain an Order of Possession and a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant.

The Landlord submitted documentary evidence that the Tenant was served notice of this application and this hearing by registered mail on September 18, 2015. Canada Post tracking information was submitted in the Landlord's evidence.

Based on the submissions of the Landlord, I find the Tenant was deemed served notice of this proceeding on September 23, 2015, pursuant to section 90 of the *Act*. Therefore, I continued in the absence of the Tenant.

### Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Has the Landlord proven entitlement to a monetary award for unpaid September and October 2015 rents?

### Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month fixed term tenancy that began on April 1, 2015. Rent of \$2,700.00 was due on or before the first of each month and on April 1, 2015 the Tenant paid \$1,350.00 as the security deposit.

The Landlord testified that he had hired a property management company to manage this tenancy because he resides in a different city. He stated that when the Tenant failed to pay the \$1,100.00 balance owed for September 1, 2015 rent, his property manager posted a 10 Day Notice to the Tenant's door on September 05, 2015.

The Landlord submitted that on September 29, 2015 he received a telephone voice mail message from the Tenant advising him that the Tenant had moved out and the Tenant asked to whom he should give the keys and the access code.

The Landlord testified that his property manager had quit in mid-September 2015 and he questioned how the Tenant obtained his telephone number. He said he did not return the Tenant's call because he did not want to have any contact with the Tenant.

The Landlord confirmed that he regained possession of the rental unit by gaining access with the access code. He withdrew his request for an Order of Possession and stated that he wished to proceed with his claim for \$1,100.00 September rent plus \$2,700.00 for October 1, 2015 rent.

The Landlord submitted that he was not able to re-rent the unit for October 1, 2015 and he is still working on cleaning up the unit. He argued that given the condition the unit was left in, he will not be able to re-rent this unit for any part of October.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on September 8, 2015 three days after it was posted to the door. The effective date of the Notice was **September 18, 2015.**

The Tenant neither paid the outstanding rent nor disputed the Notice. The Tenant vacated the property and left a message for the Landlord requesting information for the return of the keys on September 29, 2015.

The Landlord claimed unpaid rent of \$1,100.00 that was due September 1, 2015, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I find the Landlord provided sufficient evidence to prove his claim. Therefore, I award the Landlord unpaid rent for September 1, 2015, in the amount of **\$1,100.00**.

As noted above this tenancy ended **September 18, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for loss of rent for October 2015 and not rent. I accept the Landlords undisputed evidence that the rental unit was left needing cleaning and repairs which prevented the Landlord from re-renting the unit for any period in October. Therefore, I grant the Landlord's claim for loss of rent for October 2015 in the amount of **\$2,700.00**.

If the Landlord suffers additional loss they are at liberty to file another application for that loss.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent September 2015	\$1,100.00
Loss of Rent October 2015	2,700.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$3,850.00</b>
<b>LESS:</b> Security Deposit \$1,350.00 + Interest 0.00	<u>-1,350.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$2,500.00</u></b>

### Conclusion

The Landlord withdrew their request for an Order of Possession and was awarded monetary compensation of \$3,850.00 which was offset against the Tenant's \$1,350.00 security balance leave a balance due to the Landlord of \$2,500.00.

The Landlord has been issued a Monetary Order for **\$2,500.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not

comply with this Order it may be filed with 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: October 15, 2015

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Residential Tenancy Branch

