



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNR FF MNSD OLC MNR OPR

RTB-136

### Introduction

This hearing dealt with (a) an application by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim; and (b) an application by the tenant for return of his security deposit. Both parties also requested recovery of their filing fees.

Originally, the landlord had sought an order of possession and the tenant an order cancelling the 10 Day Notice but these orders were no longer needed as the tenant vacated the rental unit on September 4, 2015.

Both parties attended the hearing and had an opportunity to be heard.

### Issue(s) to be Decided

Are the parties entitled to the requested orders.

### Background and Evidence

This tenancy began on August 28, 2015. The rent was \$450.00 per month payable on the last day of the month. The tenant believed this to mean the last day of the month after living there for a month while the landlord explained that it was to be paid on the last day of the preceding month so that the rent was paid at the start of each month. The tenant paid a security deposit of \$225.00 at the start of the tenancy. A written tenancy agreement was submitted into evidence by the landlord but the tenant claims that he was never provided with a copy of that agreement. The landlord disputed this and said that the agreement was posted to the door of the rental unit on September 1, 2015.

On September 1, 2015 the landlord also served the tenant with a 10 Day Notice to End Tenancy for non-payment of rent. The Notice stipulated that the tenant had failed to

pay the \$450.00 in rent for September that was due on August 31, 2015. The tenant disputed the Notice on September 2, 2015 but never paid the outstanding rent. Rather, the tenant vacated the rental unit on September 4, 2015. The tenant also delivered a letter to the landlord on September 4<sup>th</sup> stating that he was moving out and his reasons therefor. The letter was sent to the landlord both by depositing it in her mailbox and by registered mail. Among other things, the tenant stated in the letter that the landlord had never provided him with a copy of the tenancy agreement and that he had found he was unable to communicate with her in a civil manner. The landlord claims she never received this letter. For her part, the landlord claims she only found out that the tenant had vacated on or about September 10<sup>th</sup>.

In the end, the rent was never paid for September. When asked why he did not pay the rent for September, the tenant testified that he believed the rent was not payable until the end of September, that he was concerned with his safety in dealing with the landlord and that he was unhappy with having never received a tenancy agreement.

For her part, the landlord testified that it would defy reason to accept rent at the end of each month after a tenant had already lived in the rental unit. She testified that she explained several times to the tenant prior to him moving in that the rent was due in advance on the last day of the preceding month.

The landlord testified that upon learning that the tenant had vacated she began advertising the rental unit. A new tenant has still not been found.

The landlord also testified that she did 2 hours of cleaning after the tenant vacated.

At the hearing, the tenant's father testified as a witness and said that he was the one who initially assisted his son in finding this unit because it was his first time renting his own place.

### Analysis

#### **Landlord's Claim**

The landlord has made the following claims:

September rent	\$450.00
October rent	\$450.00
Cleaning (2 hrs x \$25)	\$ 50.00
TOTAL	\$950.00

### September rent

I am satisfied that the landlord has established this claim – whether the rent was due on the last day of August or the last day of September. I find however that the agreement as to payment of rent was, in fact, the last day of the preceding month because I agree with the landlord's assertion that it would be unreasonable for a landlord to agree to accept rent after the fact. The simply would not be commercially reasonable.

I understand that the tenant began to have misgivings about living in the rental unit but that does not change the fact that the rent was due and payable by the tenant.

### October rent

The landlord has made a claim for loss of income for the month of October. The landlord has advertised the unit but has not yet found a new tenant. I am also satisfied that the landlord has established this claim. In this regard, I refer to the Residential Tenancy Policy Guideline No. 3 which deals with claims for damages for loss of rent. This Guideline provides in part as follows:

In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

### Cleaning

The landlord has claimed two hours of cleaning for the rental unit following the tenant's departure. I am satisfied that the landlord has established this claim but find the rate of \$25 per hour to be too high. I find that the rate of \$20 per hour is more reasonable. As a result, the landlord is entitled to \$40.00 for cleaning rather than \$50.00.

### Retention of Security Deposit

The landlord has requested that she be permitted to retain the security deposit in partial satisfaction of the claims established above. I am satisfied that this is appropriate. The landlord may retain the deposit.

### **Tenant's Claim**

The tenant has requested that his security deposit be returned to him. I have already decided that the landlord is entitled to retain the deposit in partial satisfaction of the claims she has established against the tenant. I therefore dismiss the tenant's claim.

### Conclusion

*Monetary Order and Security Deposit* - I find that the landlord has established a total monetary claim of \$940.00 for the outstanding rent for September and October. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$990.00. I order that the landlord retain the deposit and interest (\$0.00) of \$225.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$765.00. 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: October 29, 2015

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Residential Tenancy Branch