



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNR, MND, MNDC, MNSD

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, 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.

The tenant did not attend this hearing, which lasted approximately 31 minutes. 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 the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on August 21, 2015, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with her Application. The landlord stated that she was delayed in mailing her Application because she lives out of country and did not have any assistance with or access to print the documents and mail in a timely manner. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on August 26, 2015, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 9, 2015 ("10 Day Notice"), by way of registered mail on June 11, 2015. The landlord provided a Canada Post receipt and tracking number with her Application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on June 16, 2015, five days after its registered mailing.

At the outset of the hearing, the landlord withdrew her Application for an order of possession for unpaid rent. The landlord confirmed that the tenant had vacated the rental unit. The landlord also withdrew her Application for a monetary order for damage to the unit. The landlord confirmed that she made a premature Application, as the tenant was still residing in the rental unit at the time of her Application and she did not know the extent of damage in the unit. The

landlord confirmed that she would file a new application to recover a monetary order for damage. Accordingly, both portions of the landlord's Application are withdrawn.

At the outset of the hearing, the landlord requested an amendment to increase the monetary claim sought for unpaid rent. The landlord stated that because her Application was filed in August 2015, the September 2015 rent was not yet due. The landlord initially made an Application for unpaid rent and indicated the amount owing at that time. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include September 2015 rent of \$2,050.00. The tenant is aware that rent is due on the first day of each month as per his tenancy agreement. The tenant continued to reside in the rental unit, despite the fact that the 10 Day Notice required him to vacate the rental unit by June 26, 2015, the corrected effective date, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

#### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

#### Background and Evidence

The landlord testified that this tenancy began on October 1, 2013 and ended on October 1, 2015. Monthly rent in the amount of \$2,050.00 was payable on the first day of each month. The landlord confirmed that she originally thought that rent was \$2,100.00 per month but conceded that it was \$2,050.00 as indicated on the tenancy agreement. A security deposit of \$1,025.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord provided a copy of the written tenancy agreement for this hearing. The landlord testified that the tenant sent an email to the landlord on October 6, 2015, advising her that he had vacated the rental unit on October 1, 2015. The landlord stated that one of her agents entered the rental unit to ensure that the tenant had vacated.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$4,200.00 was due on June 1, 2015. The notice indicates an effective move-out date of June 19, 2015. The landlord provided emails between the parties regarding the 10 Day Notice and the fact that rent was unpaid by the tenant.

The landlord seeks a monetary order of \$10,250.00 for unpaid rent from May to September 2015. The landlord stated that she is not claiming for October 2015 rent because the tenant vacated on October 1, 2015. The landlord confirmed that she had her property manager collect

rent payments by way of post-dated cheques from the tenant during the first year of this tenancy. She stated that after the first year, the tenant provided her property manager with six months of cheques until April 2015. The landlord confirmed that her property manager then quit and the tenant was advised to either deposit money directly into the landlord's account or to send cheques to her bank manager. The landlord stated that the tenant did neither. The landlord testified that she was present during a conference call with her property manager and the tenant, whereby the tenant claimed to have provided post-dated cheques to the property manager for rent from May 2015 forward. The landlord confirmed that she heard her property manager advise the tenant that he had no rent cheques left.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on June 1, 2015, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on June 26, 2015, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 26, 2015. However, the tenant vacated the rental unit on October 1, 2015.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$10,250.00 from May to September 2015. I accept the landlord's undisputed sworn testimony that she did not receive any rent payments from the tenant, despite the tenant's claims that he provided post-dated cheques to the landlord's property manager. Therefore, I find that the landlord is entitled to \$10,250.00 in rental arrears for the above period.

The landlord continues to hold the tenant's security deposit of \$1,025.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$1,025.00 in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$9,225.00 against the tenant as follows:

Item	Amount
Unpaid May 2015 Rent	\$2,050.00
Unpaid June 2015 Rent	2,050.00
Unpaid July 2015 Rent	2,050.00
Unpaid August 2015 Rent	2,050.00
Unpaid September 2015 Rent	2,050.00
Less Security Deposit	-1,025.00
<b>Total Monetary Award</b>	<b>\$9,225.00</b>

The landlord is provided with a monetary order in the amount of \$9,225.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

The landlord's Application for an order of possession for unpaid rent and a monetary order for damage to the rental unit, is withdrawn.

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 23, 2015

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Residential Tenancy Branch

