



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, FF

### Introduction

This hearing was set to deal with an application by the tenant for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent or Utilities,; granting the tenant reimbursement from the landlord of the August rent and the filing fee; and compelling the landlord to comply with Act, regulation or tenancy agreement.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on September 20, 2015, the landlord did not appear.

At the start of the hearing the tenant advised that she had moved out of the rental unit so the only remaining issue was her application for a monetary order.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

### Background and Evidence

The rental unit is shared accommodation. The tenant and two other individuals each have their own bedroom and share the kitchen, bathroom and living areas. The landlord does not live on site. Each of the three roommates had separate tenancy agreements.

The tenant is a student and needed a place for September 1, 2015. Her friend looked at the place for her and on July 4, 2015 the tenancy agreement was signed by the landlord and the tenant. The agreement set out that a month-to-month tenancy was commence August 1, 2015; the monthly rent would be \$500.00 due on the first day of the month; and the tenant would pay a security deposit of \$250.00.

On July 4 the tenant paid the landlord \$500.00; \$250.00 for the security deposit and \$250.00 for half of the August rent; by Interac e-transfer. The tenant paid the balance of

the August rent by Interac e-transfer on August 2, 2015. She paid \$500.00 for the September rent by the same method on September 2, 2015.

The tenant moved into the rental unit on September 1, 2015. A move-in inspection was not conducted nor was a move-in condition inspection report completed.

On September 8, 2015, after a dispute about another issue the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Utilities. After she was served with the notice the tenant's new roommates told her that her room had been rented to someone else for the month of August. She understands that the previous tenant continued his tenancy until the end of August.

There was a very acrimonious exchange of correspondence between the landlord and the tenant. The tenant suggested a Mutual Agreement to End Tenancy. The landlord stated that the tenant had made a defamatory statement when she said he had fraudulently collected rent from two people for the same unit in August; threatened her with civil and criminal proceedings if she did not withdraw her statement; and said that he would only sign the Mutual Agreement to End Tenancy if she provided him with a letter of apology. In his letter he said, among other things:

“If I proceed with this filing I assure you I will spend enough money on litigating this until you are held completely responsible for your irresponsible actions.”;  
and;

“A word of advise. As a young student it is important to ensure you don't get caught up in unnecessary issues especially with the law as trying to get a job once someone has a judgment against you for hundreds of thousands of dollars will literally ruin your career.”

The e-mail was sent from the landlord's work address and his executive title was included on the signature line.

The tenant sent an abject letter of apology dated September 18, 2015. In her letter she stated that as she was not living at the rental unit in August “I have no real way of knowing firsthand that this statement was true, and I apologize for jumping to these accusations in my letter before thoroughly verifying their validity.”

The tenant testified that the parties signed a Mutual Agreement to End Tenancy and she moved out on September 30, 2015. A move-out inspection was not conducted and a move-out condition inspection report was not completed.

### Analysis

According to the records of Canada Post the landlord did not pick up the registered mail item that contained the Application for Dispute Resolution and Notice of Hearing and refused to accept the registered mail item that contained the tenant's evidence package.

Section 89(1) of the *Residential Tenancy Act* provides that an application for dispute resolution may be served by registered mail at the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord. Section 90 states that documents given or served by mail are deemed delivered on the fifth day after it is mailed.

The landlord was properly served with the Application for Dispute Resolution and Notice of Hearing. As a result of his failure to attend the hearing or to provide any evidence this decision is made on the undisputed evidence of the tenant.

Section 75 provides that an arbitrator may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony, or any record or thing that the arbitrator considers to be necessary and appropriate, and relevant to the dispute resolution proceeding. Thus, hearsay evidence may, if the arbitrator deems it to be appropriate, be considered by the arbitrator.

The tenant's testimony is that her roommates continued to tell her that her unit was occupied by someone else for the month of August.

This is a claim in contract. The parties agreed that the tenant would receive exclusive possession of the rental unit in return for payment of rent. She did not receive exclusive possession of the rental unit and is therefore entitled to return of the \$500.00 she paid for the month of August.

In addition, as the tenant was successful on her application she is entitled to reimbursement from the landlord of the \$50.00 she paid to file it.

### Conclusion

I find that the tenant has established a total monetary claim of \$550.00 comprised of a reimbursement for the August rent in the amount of \$500.00 and the \$50.00 fee paid by

the tenant for this application and pursuant to section 67 I grant the tenant a monetary order in this amount. If necessary, 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: November 23, 2015

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Residential Tenancy Branch

