



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR, MNDC, FF, PSF, RR

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, loss of income and the filing fee. The tenant applied for an order directing the landlord to provide services and to reduce rent. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The tenant testified that she moved out on November 03, 2015. Therefore the landlord's application for an order of possession and the tenant's application for an order directing the landlord to provide services and reduce rent are moot.

During the hearing the landlord requested that his application be amended to include an application to retain the security deposit in partial satisfaction of his claim. Since the tenancy has ended, I allow the landlord to amend his application.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid rent, loss of income and the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The tenancy started on October 12, 2014. Rent was \$800.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$400.00. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The landlord stated that the tenant failed to pay rent on October 01, 2015 and on October 05, 2015; the landlord served the tenant with a ten day notice to end tenancy in person to the male tenant. The tenant denied having received the notice. The landlord stated in his written submission that the male tenant threw the notice "*on my face*".

The tenant testified that she paid rent on October 01 and provided receipts to confirm her testimony. The landlord denied having received rent for October and stated that the tenant asked him to sign some blank receipts which he did. The landlord also stated that in the evidence package provided to him by the tenant there was no rent receipt for the month of October 2015.

The tenant also testified that on September 26, 2015, she gave written notice to the landlord to end the tenancy effective October 31, 2015. The landlord denied having received notice to end the tenancy and the tenant did not file a copy of the notice into evidence. However the tenant filed a hand written note dated September 26, 2015 which consisted of a complaint. At the end of the note, there was a paragraph which was crossed out, referred vaguely to the end of tenancy and asked the landlord to keep the deposit as rent.

The tenant stated that she moved out on November 03, 2015 and left the keys on the counter top. The tenant stated that she did not request the return of her deposit. The tenant also did not provide a forwarding address to the landlord.

During the hearing, I asked the tenant for her current address for the purpose of mailing this decision to her. She provided her address and the landlord noted the address.

The landlord is claiming rent for October plus loss of income for November.

### **Analysis**

The parties provided contradictory evidence regarding all aspects of this case. Based on the testimony of both parties I find the following:

1. The landlord testified that rent for October was not paid
2. The tenant provided a copy of a receipt dated October 01, 2015
3. The landlord denied having written a receipt for October's rent
4. The landlord stated that he served the tenant with a notice to end tenancy on October 05, 2015 and filed a copy into evidence
5. The tenant denied having received the notice to end tenancy
6. The landlord made application for an order of possession on October 15, 2015
7. The tenant applied for an order directing the landlord to provide services and reduce rent on October 01, 2015
8. The tenant agreed that she did not request the return of the security deposit

Based on further scrutiny of the nine rent receipts filed into evidence by the tenant, I find that one is an original and the rest are carbon copies.

The signatures on the receipts appear to be different and the receipts are not numbered. I am unable to determine whether the receipts are genuine or made up by the tenant, as per the landlord's testimony.

In this case, the tenant stated that she had provided written notice to the landlord on September 26, 2015 and the landlord denied having received a notice to end tenancy. The tenant filed a hand written note which is dated September 26, 2015. The note contains complaints about heat and laundry. At the end of the note she states that she is moving and that the landlord can keep the deposit towards rent.

I now have to determine whether rent for October was paid or not. In making my determination, I take into account that the ten day notice to end tenancy is dated October 05, 2015. If the tenant had paid rent on October 01, 2015, then the landlord would have no reason to serve the tenant with a notice to end tenancy. The tenant denied having received the notice, but the landlord filed a copy of the notice into evidence.

The tenant also did not request the return of the security deposit because she gave the landlord permission to keep it towards rent.

Based on the above and on a balance of probabilities, I find that it is more likely than not that the tenant did not pay rent for October 2015. Accordingly, I award the landlord rent in the amount of \$800.00.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, the tenant's note dated September 26, 2015 states that she is moving but does not specify the end date of tenancy. However since the notice is dated September 26, 2015, the earliest that the tenant could end is October 31, 2015. Based on the date of the notice the landlord should have understood that the tenancy would probably end on October 31, 2015 and could have clarified the end date with the tenant.

The tenant moved out on November 03, 2015 and therefore I find that the landlord is entitled to rent for the period that the tenant overstayed. The prorated amount of rent for three days is \$79.99. I award the landlord this amount.

Since the landlord has proven his case, he is entitled to the recovery of the filing fee of \$50.00.

Overall the landlord has established a claim as follows:

1.	Rent for October 2015	\$800.00
2.	Rent for November 01-03	\$79.99
3.	Filing fee	\$50
	Total	<b>\$929.99</b>
	Minus security deposit	-\$400.00
	Balance owed to landlord	<b>\$529.99</b>

Overall the landlord has established a claim of \$529.99 and accordingly I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$529.99**.

The tenant's application 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: November 05, 2015

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Residential Tenancy Branch

