



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

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

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant elected to call one witness KvT.

I reviewed the documents before me with the parties. Each party confirmed receipt of the opposing party's evidence.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties and witness, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The tenant first viewed the rental unit in early June 2015. At this time the rental unit was occupied. The tenant received assurance from the landlord that the rental unit

would be clean at the beginning of the tenancy and that certain deficiencies including painting and repair of a deck would be remedied.

On 4 June 2015, the tenant and landlord signed the tenancy agreement. The tenancy agreement set out that the tenancy would begin 1 July 2015 at a monthly rent of \$985.00. Rent was due on the first. The tenancy agreement does not include any language that indicates that formation of the agreement is contingent on any conditions. The landlord testified that she took down her internet advertisement at this time.

The landlord testified that she completed a condition move out inspection with the prior tenants. The landlord testified that the place looked “terrific” and that she returned the prior tenants’ security deposit.

On 1 July 2015 a condition inspection was conducted with both parties in attendance. The tenant did not sign the condition move in inspection report. The tenant provided post-dated cheques and a security deposit on 1 July 2015.

The landlord testified that the tenant expressed that she was not satisfied with the condition of the rental unit. In particular, the tenant testified that the rental unit was not clean. The landlord testified that she stayed in the rental unit to assist the tenant with remedying the cleanliness issues. The tenant testified that the landlord assisted with cleaning for no more than thirty minutes. The landlord testified that she considered the rental unit sufficiently clean by the time she left. The landlord admits she told the tenant that if she wanted the rental unit cleaner, she would have to clean it herself. The landlord testified that the tenant left the rental unit. The landlord testified the tenant came back later that day and said that she would move into the rental unit. On 2 July 2015, the tenant told the landlord that the rental unit was not clean enough and provided notice to leave.

The landlord testified that she told the tenant that she was in breach of the tenancy agreement and that the landlord would be cashing the cheque for July’s rent. The landlord testified that she waited until 3 July 2015 before reposting the rental unit to see if the tenant would change her mind. The landlord testified that she found a new tenant on 8 July 2015 for a tenancy beginning 1 August 2015.

The tenant testified that she cancelled the cheques she delivered to the landlord.

The landlord provided me with photographs of the rental unit. The landlord testified that these photographs were taken on 1 July 2015. The tenant denies that the landlord’s

photographs accurately represent the state of the rental unit. The tenant testified that if the rental unit was in that condition she would have continued the tenancy.

The tenant provided me with photographs that show the condition of the rental unit on 1 July 2015.

The tenant provided me with a letter from KvT. KvT attended the hearing and adopted the contents of her letter as true. KvT testified that the rental unit was not in good condition and was grimy. KvT testified that the bathroom looked like it had only been given a surface wipe.

### Analysis

Pursuant to section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that the parties entered into a valid tenancy agreement on 4 June 2015. Pursuant to this tenancy agreement rent in the amount of \$985.00 was due on 1 July 2015.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant was not entitled to deduct any amount from rent. Accordingly, the tenant was obligated to pay rent in the amount of \$985.00 on 1 July 2015. The tenant did not pay this rent. The landlord is entitled to a monetary order in the amount of \$985.00.

Pursuant to paragraph 44(1)(d) of the Act, I find that the tenancy ended 2 July 2015 when the tenant informed the landlord that she would not be moving into the rental unit. The tenant did not provide effective notice to end the tenancy at this time.

It is immaterial in this application whether or not the rental unit was clean at the beginning of the tenancy. The tenant's remedy under the Act if the rental unit was not clean was to provide the landlord with notice pursuant to subsection 45(3) of the Act for breach of a material term and provide the landlord with a reasonable period to correct the breach. The tenant did not provide any such notice. Additional remedies were available to the tenant under section 67 of the Act for a landlord's breach of the Act, regulations or tenancy agreement. The tenant was not entitled to the self-help remedy of unilaterally terminating the tenancy and cancelling her rent payments.

As the landlord has been successful in her application, she is entitled to recover her filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,035.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid July Rent	\$985.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,035.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 14, 2016

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Residential Tenancy Branch

