



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPR, CNR, MND, MNR, MNDC, FF*

### **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 a monetary order for unpaid rent and the filing fee. The tenant applied to cancel the notice to end tenancy and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence, make submissions and give affirmed testimony.

This matter was initially heard on October 22, 2015. The tenant did not attend that hearing. The Arbitrator granted the landlord a monetary order for unpaid rent for the months of July and August 2015. The tenant applied for a review of this decision and was granted a review hearing that was scheduled to be heard on this date (January 14, 2016)

The tenant moved out on October 03, 2015. Since the tenant has moved out, the landlord no longer requires an order of possession and in addition, the tenant's application to cancel the notice to end tenancy is moot. Therefore, this hearing only dealt with the monetary claim of the landlord.

During the hearing the landlord confirmed that this application was solely for the recovery of rent for July and August and for the recovery of the filing fee. She also mentioned that other matters related to this tenancy would be dealt with during the next hearing that is scheduled for April 26, 2016.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover unpaid rent for July and August 2015, and the filing fee?

### **Background and Evidence**

The tenancy started on June 04, 2012 and ended on October 03, 2015. The monthly rent was 850.00 due on the third of each month. There is no written tenancy agreement and the tenant did not pay a security deposit.

The tenant testified that she paid rent by cash every month and the landlord did not provide a rent receipt. The landlord agreed that she did not provide a receipt and stated that the tenant did not ask for one.

On July 14, 2015, the landlord served the tenant with a letter entitled "*Notice to vacant the basement*" This letter requested the tenant to move out by August 31, 2015. The landlord stated in the letter that the reason for the notice was that the landlord's relatives were planning to visit and she needed the basement to accommodate them.

On August 06, 2015, the landlord provided the tenant with a ten day notice to end tenancy for nonpayment of rent. According to the notice, rent in the amount of \$850.00 that was due on August 01, 2015 was not paid. The end date of the tenancy was not filled out.

The tenant stated that she paid rent in cash rather than by cheque, at the landlord's request. The tenant testified that rent for July and August was paid to the landlord on July 04 and August 04, 2015, respectively. The landlord denied having received rent and made this application for the recovery of rent in the total amount of \$1,700.00 plus \$50.00 for the filing fee. The tenant agreed that she had not requested a rent receipt because it was the practice through the tenancy of three years, to pay rent by cash without a receipt.

### **Analysis**

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement.

The parties did not agree about the payment of rent. The tenant was very clear that she had paid rent in cash as she usually does while the landlord vehemently denied having received rent for July and August 2015. Neither party had any documents to support their testimony.

Based on the testimony of both parties, I find that one of them is not being truthful. It is up to me to decide whether rent was paid or not and I must do this on a balance of probabilities and based on my preference for the testimony of one of the parties.

Upon review of the letter dated July 14, 2015, requesting the tenant to move out, I find that the notice makes no reference to the nonpayment of rent for July. The notice explains that the reason for the request is that the landlord's relatives were planning a visit and the landlord needed the basement to accommodate them.

If rent had not been paid, the landlord could have served the tenant a ten day notice to end the tenancy which would have provided a faster and more convenient resolution for the landlord's need to have the basement available for use by her relatives. If rent for July was outstanding, then the landlord would have included a request for rent in her note dated July 14, 2015.

Upon review of the 10 day notice to end tenancy served to the tenant on August 06, 2015, the notice states that \$850.00 for August is owed. The note does not say that \$850.00 for July is also owed. In any event the notice filed into evidence is incomplete and may not have been upheld by an arbitrator.

Based on the above observations, I find on a balance of probabilities that it is more likely than not that the tenant paid rent in cash for the months of July and August 2015 and therefore does not owe rent for these months.

The landlord has not proven her case and must therefore bear the cost of filing her own application.

The tenant had also applied for the recovery of the filing fee. Since the tenant's application to cancel the notice to end tenancy was rendered moot by the tenant's action of moving out, the tenant must bear the cost of filing her own application.

### **Conclusion**

The applications of both the landlord and the tenant are 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: January 14, 2016

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Residential Tenancy Branch

