



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PONICH PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF (Landlord's Application)  
CNR, MNR, MNDC, RR, FF (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by current Landlord and the Tenant.

The Tenant and the current Landlord (collectively referred to as the "Landlords") appeared for the original hearing on October 26, 2015 along with the previous Landlord who was named as the respondent on the Tenant's Application. During the original hearing, it was determined that the Tenant was not in possession of the previous Landlord's extensive amount of documentary evidence, submitted to rebut the Tenant's monetary claim.

Therefore, I adjourned the proceedings to allow for the service of this evidence to enable the Tenant to consider the evidence and respond to it accordingly. The parties were issued with an Interim Decision dated October 26, 2015.

### Preliminary Issues

The current and previous Landlord appeared for this reconvened hearing. However, there was no appearance by the Tenant for the 17 minute duration of the hearing. Therefore, as the Tenant failed to appear and present the merits of her claim, and the Landlords were ready to respond to the Tenant's Application, the Tenant's Application was dismissed.

The current and previous Landlord provided affirmed testimony in relation to the current Landlord's Application against the Tenant. They also confirmed that the Tenant had been served with the evidence for this hearing by registered mail to the mailing address that the Tenant had provided during the original hearing. Therefore, in the absence of any other evidence to dispute this, I accept the Tenant was served with the Landlords' evidence pursuant to my Interim Decision dated October 26, 2015.

At the start of the hearing, I dismissed the Landlord's Application for an Order of Possession as the tenancy had ended and the Tenant had moved out of the rental unit. The hearing continued to hear the undisputed evidence pertaining to the current Landlord's monetary claim.

### Issues to be Decided

- Is the current Landlord entitled to unpaid and lost rent?
- Is the current Landlord entitled to cleaning costs for the rental unit?
- Is the current Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim?

### Background and Evidence

The Landlords testified that this tenancy started in October 2014 on a month to month basis. Rent under the written tenancy agreement was payable by the Tenant in the amount of \$1,280.00 on the first day of each month. The Tenant paid a security deposit of \$640.00 on September 19, 2014 which was transferred by the previous Landlord to the current Landlord at the end of July 2015.

The current Landlord testified that when he purchased the property at the end of July 2015 he contacted the Tenant by text message explaining that he was the new owner, that he was taking over the tenancy, and provided rent payment instructions which were payable to him. The current Landlord testified that the previous Landlord had informed the Tenant that the rental unit had been sold and that the current Landlord was going to be the new Landlord of the tenancy. The current Landlord provided a written letter dated July 28, 2015 which she served to the Tenant informing of the change of ownership.

The Landlord testified that the Tenant failed to pay rent for August 1, 2015 because she claimed that she was still in the process of confirming that the current Landlord was indeed the new owner of the rental unit. The Landlord also explained that the Tenant claimed she was withholding rent because the previous Landlord had failed to complete repairs to the rental unit which was a situation that was still ongoing.

As a result, the current Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on August 6, 2015. The Notice was provided into evidence and shows a vacancy date of August 16, 2015 due to \$1,280.00 payable on August 1, 2015. The current Landlord testified that the Notice was served to the Tenant by posting it to the Tenant's door.

The current Landlord testified that the Tenant then failed to pay rent for September 2015. Instead he received from the Tenant a written letter, dated August 31, 2015, informing him that the Tenant was going to be vacating the rental unit at the end of September 2015.

The previous Landlord testified that she completed a move-in Condition Inspection Report (the "CIR") at the start of the tenancy with the Tenant and provided this into evidence. Although the move-in CIR is incomplete, it shows three comments in the "comment" section of the CIR and was signed by the Tenant. The current Landlord testified that he did not complete a move-out CIR because the relationship between him and the Tenant had seriously deteriorated.

The current Landlord testified that when the Tenant moved out she left a number of her personal belongings in boxes and garbage behind which he had to dispose of. In support of this claim, the Landlord provided extensive photographic evidence verifying the amount of garbage and personal belongings that had been abandoned by the Tenant at the end of the tenancy. This was both within the rental unit and in the yard area. The Landlord provided an invoice for the costs of performing the cleanup in the amount of \$640.00 which related to 16 hours of clean up.

The current Landlord testified that because he had to have the rental unit cleaned and the Tenant failed to leave it clean, he lost rent for the month of September 2015. Therefore, in addition to the two months of unpaid rent, the current Landlord claims loss of rent for September 2015.

The current Landlord also claimed for mailing costs. However, the Landlords were informed during the hearing, that costs associated with preparation for dispute resolution cannot be awarded under the *Residential Tenancy Act* (the "Act") and must be borne by each party. Therefore, this portion of the current Landlord's Application was dismissed.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement **whether or not** the landlord complies with the Act. Based on the Landlords' undisputed evidence and the Notice, I find that the Tenant failed to pay the rent for the months of August and September 2015 as required by the tenancy agreement. Therefore, the Landlord is awarded **\$2,560.00** in unpaid rent.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of a tenancy. Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

The Tenant provided no evidence prior to the hearing to dispute the Landlord's claim that the rental unit was vacated and left clean. I am satisfied by the Landlord's oral testimony which is supported by photographic evidence showing that the Tenant left garbage and personal property behind which should have been removed at the end of the tenancy. I also find that the move-in CIR does not show that the property left behind in the photographs was present at the start of the tenancy and did not belong to the Tenant. Therefore, I accept the Landlord's costs as verified by the invoice provided and award the amount of **\$640.00** claimed.

In relation to the loss of rent claimed by the Landlord for October 2015, I make the following findings. I found the Landlord's evidence of when the Tenant's written notice was served to him to be unclear. The Tenant's written notice is dated August 31, 2015 and therefore, this would suggest that the Tenant provided proper written notice of one full rental months of notice pursuant to Section 45(1) of the Act. In addition, a party claiming compensation must take reasonable steps to mitigate any loss pursuant to Section 7(2) of the Act. I find the Landlord provided insufficient evidence of how he made efforts to find a new Tenant after he was served the written notice by the Tenant for the October 2015 period. However, Policy Guideline 3 to the Act states that where a tenancy is ended with proper notice, a landlord may still claim for loss of rent if the premises are un-rentable due to damage caused by the tenant.

Based on the foregoing, I find the current Landlord has provided insufficient evidence that he started efforts to find a new renter for October 2016 after being given proper notice by the Tenant and that the 16 hours of labor incurred for cleaning up the rental unit impacted a potential new tenancy the Landlord had agreed to. In addition, I find the current Landlord failed to provide sufficient evidence of efforts made to re-rent the rental unit after the cleanup was completed. Therefore, I dismiss the current Landlord's claim for October 2015 rent.

As the current Landlord has been successful in this matter, he is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the current Landlord is **\$3,250.00**.

As the current Landlord already holds **\$640.00** of the Tenant's security deposit, I order him to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the current Landlord is awarded the remaining amount of **\$2,610.00**. The current Landlord is issued with a Monetary Order pursuant to Section 67 of the Act for this amount. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if voluntary payment is not. Copies of this order are attached to the current Landlord's copy of this decision.

### Conclusion

The Tenant has breached the Act by not paying rent and not cleaning the rental unit. Therefore, the current Landlord can keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of **\$2,610.00**. The Tenant's Application is dismissed without leave to re-apply as the Tenant failed to appear for the reconvened hearing.

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: April 6, 2016

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Residential Tenancy Branch