



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, MNDC, OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on August 8, 2016 for:

1. More time to make an application to cancel a notice to end tenancy - Section 66;
2. An Order cancelling a notice to end tenancy - Section 46; and
3. A Monetary Order for compensation - Section 67.

The Landlord applied on September 7, 2016 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Parties confirmed that the Tenant has moved out of the unit and the Landlord has possession of the unit. I therefore dismiss the Landlord’s claim for an order of possession.

The Tenant includes in her application a claim for damages in relation to the state of the unit. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other. As the claims in relation to the state of the unit or breaches by the Landlord is not related to the primary issue of the claim to cancel a notice to end tenancy I dismiss this claim with leave to reapply. As the Tenant has moved out of the unit I dismiss the claims in relation to the notice to end tenancy and the claim for more time.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 2, 2016. Rent of \$750.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$375.00 as a security deposit and \$200.00 as a pet deposit.

The Tenant states that the tenancy ended on August 31, 2016. The Landlord states that the tenancy ended on September 3, 2016.

The Landlord states that the Tenant failed to pay rent and claims \$750.00 for May 2016, \$300.00 for June 2016, \$300.00 for July 2016 and \$750.00 for August 2016. The Landlord also claims unpaid rent for September 2016.

The Tenant states that no rent was paid for these amounts as the Tenant made deductions for amounts the Tenant believed the Landlord should provide as compensation for the Landlord's failures to provide, inter alia, a clean unit at move-in and yard maintenance.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

Given the undisputed rent requirements in the tenancy agreement and based on the undisputed evidence of rents unpaid I find that the Landlord has substantiated its claim to **\$2,100.00** in unpaid rent. Noting that the Landlord has only claimed unpaid rent and not lost rental income I dismiss the Landlord's claim for September 2016 rent with leave to reapply. As noted under the preliminary matters the Tenant has leave to reapply for compensation in relation to any breaches of the tenancy agreement or Act by the Landlord. As the Landlord's application has had merit in relation to the unpaid rent I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,200.00**. Deducting the combined security and pet deposit of **\$575.00** plus zero interest leaves **\$1,625.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$575.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$1,625.00**. 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: September 28, 2016

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Residential Tenancy Branch