



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MND, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit. The landlord had named two tenants in filing this Application and provided registered mail receipts, including tracking numbers, to prove hearing packages were sent to each tenant on July 28, 2016. The registered mail for the female tenant was sent to the rental unit as she was still residing in the rental unit at the time of mailing and the Canada Post website shows that she signed for the registered mail. The registered mail for the male tenant was sent to a different address, one believed to be that of the male tenant's parents home; however, the signature for the registered mail does not appear to be that of the male tenant when I compare it to the signature on the tenancy agreement. I was satisfied that the female tenant was served with notification of this proceeding but I was not satisfied that the male tenant was served. Therefore, I excluded the male tenant as a party to this dispute and this decision and the Order that accompanies it names the female tenant only.

At the outset of the hearing the landlord confirmed that he has since regained possession of the rental unit and the rental unit has been re-rented effective today. As such, I find it unnecessary to provide the landlord with an Order of Possession.

As for the landlord's monetary claim provided in the Application, the landlord had clearly indicated he was seeking unpaid and/or loss of rent for the months of July and August 2016 in the amount of \$1,150.00 for each month. He also requested authorization to retain the security deposit in anticipation of cleaning and damage. Not only were such damages anticipatory but no specific amounts were provided. The landlord then attempted to amend the monetary claim to include actual costs for cleaning, damage and failure to return keys by way of a submission received by the Branch on August 24, 2016. The submission did not meet the requirements for amending an Application or the requirement to submit evidence no less than 14 days before the hearing. Nor, was the submission served upon the tenant. Accordingly, I declined to hear the landlord's

claims for cleaning, damage and other losses and the landlord was informed that he remains at liberty to file another Application to pursue those losses. I informed the landlord that I would proceed to hear the claim for unpaid and/or loss of rent as that part of the claim was sufficiently clear in the Application. The landlord requested that I authorize him to retain the security deposit in partial satisfaction of the unpaid rent and have amended the application to reflect that request since it is non-prejudicial to the tenant.

#### Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid and/or loss of rent from the tenant for the months of July 2016 and August 2016?
2. Is the landlord authorized to retain the security deposit in partial satisfaction of unpaid rent?

#### Background and Evidence

The parties entered into a one year fixed term tenancy that started September 1, 2015 and was set to expire on August 31, 2016. The tenants paid a security deposit of \$575.00 and the monthly rent was set at \$1,150.00 payable on the first day of every month. The tenants failed to pay rent for July 2016 and on July 10, 2016 the landlord personally served the female tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants did not pay the outstanding rent or vacate the rental unit by the effective date on the 10 day Notice and the landlord proceeded to file this Application.

On August 3, 2016 the tenant received the hearing package containing the landlord's Application and contacted the landlord. She informed the landlord that she was in the process of moving out. The tenant did not return possession of the unit to the landlord and on August 23, 2016 the landlord attended the property and determined the rental unit had been abandoned. The landlord proceeded to repair and clean the property and has re-rented the unit starting September 1, 2016.

The landlord seeks to recover unpaid and/or loss of rent from the tenant for the months of July and August 2016 in the sum of \$2,300.00.

#### Analysis

Under section 26 of the Act, a tenant is required to pay rent pursuant to their tenancy agreement. Based upon the undisputed evidence before me, I accept that the tenants were required to pay rent of \$1,150.00 on the first day of every month up to and

including the month of August 2016 pursuant to their tenancy agreement and they failed to do so. I also accept that upon receiving the 10 Day Notice the tenants failed to return vacant possession of the rental unit within 10 days, further contributing to the landlord's loss of rent for the month of August 2016. Therefore, I grant the landlord's request to recover \$2,300.00 from the tenant for unpaid and/or loss of rent for the months of July 2016 and August 2016.

I further award the landlord recovery of the filing fee paid for this Application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid and/or loss of rent	\$2,300.00
Filing fee	100.00
Less: security deposit	<u>(575.00)</u>
Monetary Order	\$1,825.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

### Conclusion

The landlord has been authorized to retain the security deposit in partial satisfaction of unpaid rent and has been provided a Monetary Order for the balance of \$1,825.00 to serve and enforce upon the tenant. The landlord's claims for damage, cleaning and any other losses have been dismissed with leave to reapply.

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 01, 2016

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Residential Tenancy Branch