



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPR MNR MNSD MNDC FF O  
For the tenants: MT CNR LAT

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenant’s security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to recover the cost of the filing fee and other unspecified relief. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 10, 2017 (the “10 Day Notice”), for more time to make an application to cancel a notice to end tenancy, and for authorization for the tenants to change the locks to the rental unit.

The landlord attended the teleconference hearing which began promptly on Wednesday, October 4, 2017 at 11:00 a.m. Pacific Time. The tenants did not attend the hearing. As the tenants did not attend the hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application and after a total of 17 minutes, the hearing was concluded.

The hearing process was explained to the landlord, and the landlord was given an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the landlord only named tenant E-A.J. the landlord confirmed her understanding that if the landlord was successful with her claim, that only tenant E-A.J. will be named on a resulting monetary order and not both tenants.

As tenant E-A.J. (the “tenant”) did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenant by personal service on August 3, 2017 at the rental unit and that the tenant accepted the package from the landlord. As a result, and without any evidence to prove to the contrary, I find the tenant was served with the Notice of Hearing, Application and documentary evidence on August 3, 2017 as indicated by the landlord.

#### Preliminary and Procedural Matters

Firstly, the landlord testified that the tenants vacated the rental unit on August 3, 2017 after the tenant was served with the Notice of Hearing, Application and documentary evidence which results in there being no need for an order of possession. The tenants have returned possession of the rental unit back to the landlord.

Secondly, the landlord testified that her monetary claim has decreased from \$2,650.00 from the time she first applied for compensation to the reduced amount of \$182.25 comprised of \$100.00 as the remaining rent owing for July 2017 plus \$82.25 for three days of August rent calculated at the per diem rental amount of \$27.42 per day for three days. The amount of \$27.42 was calculated by dividing the month rent of \$850.00 by 31 days for August which totals \$27.42 per day for rent and then multiplying that amount by three days which is \$82.25.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 1, 2017 and ended on August 3, 2017 when the tenant vacated the rental unit. Although the tenant paid a \$425.00 security deposit, the landlord testified that she has already returned \$242.75 of that amount to the tenant leaving a security deposit balance held by the landlord in the amount of \$182.25 which the landlord is now applying for authorization to retain as described above.

The landlord testified that her reduced monetary claim of \$182.25 is comprised of \$100.00 for the remaining rent owing for July 2017 plus \$82.25 for three days of August rent as the tenant was overholding the rental unit from August 1-3, 2017 inclusive. The calculation of the \$82.25 portion is described above in detail.

Regarding July 2017 rent of \$850.00 the landlord testified that the tenant paid \$475.00 originally and owed the remaining \$475.00 which prompted the landlord to issue a 10 Day Notice. Eventually, albeit late, the Ministry then paid the landlord \$375.00 of the \$475.00 leaving an unpaid balance of \$100.00 for July 2017 rent.

While the tenants disputed the 10 Day Notice originally, they failed to attend the hearing which I find has the same result as not disputing the 10 Day Notice. The effective date listed on the 10 Day Notice was July 20, 2017 which has already passed. The landlord testified that the tenant did not vacate the rental unit until August 3, 2017.

### Analysis

Based on the undisputed testimony of the landlord and the unopposed documentary evidence before me, and on the balance of probabilities, I find the following.

**Monetary claim** – I accept the landlord's undisputed testimony that the landlord has suffered a loss of \$100.00 for the unpaid portion of July 2017 rent, plus \$82.25 for August 1-3, 2017 inclusive. Based on the above, I find the landlord has proven their undisputed monetary claim of **\$182.25** as I find the tenants breached section 26 of the *Act* which requires full payment of rent on the date that it is due in accordance with the tenancy agreement.

As the landlord's claim has merit, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Based on the above, I find the landlord has established a total monetary claim of **\$282.25** as described above.

The landlord continues to hold \$182.25 of the tenants' security deposit which has not accrued interest since the start of the tenancy based on the undisputed information before me. **I authorize** the landlord to retain the tenants' full security deposit balance of \$182.25 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$100.00**.

### Conclusion

The tenants' application is dismissed in full, without leave to reapply.

The landlord's application is successful.

The landlord has established a total monetary claim of \$282.25 and has been authorized to retain the tenants' security deposit balance of \$182.25 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$100.00. Should the landlord require enforcement of this order the landlord must first serve the tenant and then the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 6, 2017

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Residential Tenancy Branch