



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR, CNC, DRI, MNSD, MNR, OPR

### 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 September 5, 2017 for:

1. An Order cancelling a two notices to end tenancy - Sections 46 and 47;
2. An Order allowing more time to make the application to cancel the notices to end tenancy - Section 66;
3. An Order in relation to a rent increase - Section 43; and
4. An Order for the return of the security deposit - Section 38.

The Landlord applied on September 11, 2017 with an amendment made October 31, 2017 for:

1. An Order of Possession - Section 55; and
2. An Order for unpaid rent or utilities - Section 67.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. During the hearing the Parties reached a mutual agreement to resolve the dispute over the notices to end tenancy as set out below.

### Settlement Agreement

**The Parties mutually agree as follows:**

- 1. The tenancy will end and the Tenant will move out of the unit no later than 1:00 p.m. on November 20, 2017; and**
- 2. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the mutual agreement reached during the Hearing, I find that the Parties have settled their dispute in relation to the notices to end tenancy. In order to give effect to this agreement I grant the Landlord an order of possession effective 1:00 p.m. on November 20, 2017.

#### Remaining Issue(s) to be Decided

Is the Tenant entitled to a return of rental monies paid?

Is the Landlord entitled to unpaid rent?

Is the Tenant entitled to return of the security deposit?

#### Background and Evidence

The Tenant states that he orally agreed to rent the unit and moved into the unit on May 10, 2017. The Tenant states that he was told the rent would be \$600.00 per month. The Tenant states that he paid this amount on May 1, 2017 in cash and that no receipt was provided. The Tenant states that no tenancy agreement was signed. The Tenant states that no security deposit was collected at this time. The Tenant states that the Parties then entered into a written tenancy agreement with him and another tenant on June 5, 2017 for the same unit. The Tenant states that the agreement to pay a higher amount of rent was based on the Landlord's permission for the Tenant to have a roommate and in exchange for the Landlord completing repairs to the unit. The Tenant states that the repairs were not done. The Tenant states that the rent of \$1,000.00 was to start for July 1, 2017. It is noted that there is no start date indicated on the written tenancy agreement. The Tenant states that he paid the \$1,000.00 in cash for June

2017 and that the Landlord in realizing the error returned \$300 or \$400.00 to the Tenant for that month. The Tenant states that he paid \$1,000.00 for July and August 2017. The Tenant states that the Landlord never did the agreed repairs and claims \$1,200.00 for overpaid rent for four months.

The Parties agree that for the written tenancy agreement the Landlord collected a security deposit of \$500.00. The Tenant states that the Landlord told the Tenant if the bills were put in the Tenant's name and given the increased rental amount that no security deposit would have to be paid. The Tenant claims return of the security deposit. The Tenant states that he also paid a mail key deposit of \$35.00 and claims this return.

The Landlord states that the Tenant was around and working for the Landlord's partner but that the Tenant did not move into the unit in May 2017. The Landlord states that the unit was viewed by the Tenant sometime in May and that the Tenant moved into the unit on June 1, 2017. The Landlord states that the tenancy agreement was not signed until June 5, 2017 as the Parties were unable to connect before that date. The Landlord states that no rent was paid for May 2017 and that the Landlord does not maintain any accounting records for the rental income. The Landlord states that there was no agreement for an increased rent in exchange for any repairs to the unit.

The Landlord states that the Tenant only paid \$500.00 for September 2017 rent and paid no rental monies for October or November 2017. The Landlord claim unpaid rent for these months. It is noted that the written tenancy agreement only names Landlord MW as a Landlord.

### 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. No rent is payable once a tenancy ends.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. As there is no supporting evidence of any agreement that the rent of \$1,000.00 was payable starting July 1, 2017 only on the condition that repairs were completed, given the Landlord's equally plausible oral evidence that no such agreement was made, and considering the existence of a written tenancy agreement that requires the payment of \$1,000.00 per month for rent I find that the Tenant has not substantiated that the rent of \$1,000.00 was not payable from July 2017 onward or that the Tenant is entitled to recover any amount of paid rent. I dismiss the Tenant's claim for return of a portion of rental monies paid.

Based on the undisputed evidence that the Tenant did not pay the full rent as required by the tenancy agreement for September and October 2017 I find that the Landlord has substantiated an entitlement to **\$1,500.00** (\$500.00 + 1,000.00). As the tenancy ends on November 20, 2017 I find that the Landlord is entitled to unpaid rent for the period November 1 to 20, 2017 inclusive in the amount of **\$666.60**. This amount is based on a per diem amount of \$33.33 x 20 days. Deducting the security deposit plus zero interest of **\$500.00** from the Landlord's total entitlement of **\$2,166.60** leaves **\$1,666.60** owed to the Landlord from the Tenant. As Landlord RL is not a party to the tenancy agreement I grant the monetary order and the order of possession in Landlord MW's name only.

As the Tenant applied for return of the security deposit before the tenancy was ended and as the security deposit has been set off against the Landlord's entitlement, I dismiss this claim. As the tenancy has not yet ended I dismiss the Tenant's claim for return of the key deposit with leave to reapply if the Landlord does not return this deposit with the return of the key. As the Tenant provided no evidence in relation to the claim for a rent payment of \$500.00 and as this claim is not otherwise clear from the evidence that was provided, I dismiss this claim. In effect the Tenant's application is dismissed in its entirety.

Conclusion

The Tenant's application is dismissed.

I grant the Landlord an order of possession effective 1:00 p.m. on November 20, 2017.

I Order the Landlord to retain the security deposit plus interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord a monetary order under Section 67 of the Act for the remaining amount of **\$1,666.60**. 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: November 16, 2017

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Residential Tenancy Branch