



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the landlord for an Order of Possession, a Monetary Order for unpaid rent, and to recover the filing fee for this proceeding. The landlord also applied to keep all of the security deposit. At the outset of the hearing the landlord confirmed that the tenant has moved out and as a result has abandoned his application for an Order of Possession

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to an adult person residing at the rental unit on behalf of the tenant on October 02, 2009. The tenant confirmed she had received them. The application names another tenant who is not connected to this hearing. This other tenant appeared for the hearing but left the conference call as the landlord explained that she is not part of this application and her name was added to the application by mistake.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the landlord entitled to keep all or part of the security deposit?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?



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## Background and Evidence

This tenancy started on May 01, 2009 and ended around the first or second week of November, 2009. This was a month to month tenancy. Rent was \$450.00 per month including utilities and was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$225.00 on May 01, 2009. The tenant paid \$410.00 for her rent in June, \$350.00 for her rent in July, 2009. Since that time she has not paid any more rent to the landlord. A 10 Day Notice to End Tenancy was issued in person to the tenant on September 23, 2009. This Notice stated that the tenant had five days to pay the rent or dispute the notice or the tenancy would end on October 02, 2009. The tenant did not pay the rent or apply for Dispute Resolution.

The landlord seeks a Monetary Order for the rent arrears for June of \$40.00, \$100.00 for July and \$450.00 for August, September, October and November, 2009 to a total amount of \$1,940.00. The landlord requests an Order to keep the tenants security deposit in partial payment of the rent arrears and to recover his filing fee of \$50.00.

The tenant states that she only received one page of the 10 Day Notice to End Tenancy and therefore this was an invalid document. However, the tenant testifies that she did move out around the first week of November, 2009. The tenant disputes the amount of rent owed. She states that she was told her rent would be \$350.00 per month plus utilities. She states she had a verbal agreement and not a written tenancy agreement as she moved into the house after the other tenants.

The tenant states that she offered to tile the bathroom to work off the debt for unpaid rent. She purchased some tiles from work but on starting the work she found a high level of black mould in the bathroom and so she stopped work and contacted the landlord. The landlord has employed a contractor to do the work. The other tenants of the house contacted the city about the issues with the bathroom.

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The landlord testifies that due to the black mould issues the city has now agreed the work done in the bathroom. And because the tenant did not finish the work as agreed she continues to owe her outstanding rent.

## Analysis

I have reviewed the documentation provided by the landlord for this application. As part of the application the landlord is required to provide a copy of the two page 10 Day Notice to End Tenancy Due to Unpaid Rent or Utilities. Page two of the notice provides information to the tenant about the reasons given for the Notice and the steps they can take to respond to the Notice

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In the documents before me the landlord has not provided page two of the notice to end tenancy. The tenant confirms that she only received page one of the 10 Day Notice and the landlord confirms that this was the only page served on the tenant at the time. In order for a legal notice to be valid and enforceable it must be complete. However, the tenant has now moved out of the rental unit.

Section 26 of the *Act* states:

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant disputes how much rent she was supposed to pay each month and testifies that her rent was only \$350.00. However the tenant did not dispute the landlords' testimony that she paid \$410.00 in rent for June, 2009 and owed \$40.00 for the remainder of the rent. Therefore, I find I prefer the landlords' testimony that rent was \$450.00 per month. I find the landlord is entitled to recover rent arrears of **\$1,940.00**. I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit in partial payment of the rent arrears.



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As the landlord has been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

|                              |             |
|------------------------------|-------------|
| Outstanding rent arrears     | \$1,940.00  |
| Less security deposit        | (-\$225.00) |
| Total amount due to landlord | \$1,765.00  |

## Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,765.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: December 04, 2009.

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Dispute Resolution Officer