



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, provided affirmed testimony, and testified that the evidence provided to the Residential Tenancy Branch was also provided to the tenant. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents, along with the evidence, the tenant did not attend. The landlord provided a copy of a receipt from Canada Post dated September 9, 2011 which the landlord testified was for a registered mail package addressed to the tenant at the tenant's forwarding address containing the application, notice of hearing and evidence. I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

The evidence package provided to the Residential Tenancy Branch was received by the Branch on November 17, 2011, which I find is not within the time provided for in the *Residential Tenancy Act* and Rules of Procedure. In the absence of any consent by the tenant, I find that the tenant might be prejudiced by the inclusion of such evidence, and therefore, that evidence is not considered in this Decision. All testimony of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on July 1, 2011 and ended on September 3, 2011 after the landlord had successfully applied for an Order of Possession for unpaid rent or utilities. Rent in the amount of \$600.00 per month was payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$300.00, none of which has been returned to the tenant.

The landlord also testified that the parties had agreed that the tenant would pay the \$300.00 security deposit and \$300.00 towards July's rent on July 1, 2011 and would pay the balance of July's rent by the 15<sup>th</sup> of July, 2011, however, the tenant did not make the July 15<sup>th</sup> instalment. The tenant further failed to pay any rent for the month of August, 2011.

A hearing was conducted before a Dispute Resolution Officer in August, 2011 wherein the Dispute Resolution Officer granted an Order of Possession for unpaid rent. The Decision stated that the landlord had not served the tenant pursuant to Section 89 of the *Residential Tenancy Act* and the request for a monetary order was denied. The Dispute Resolution Officer left it open to the landlord to make a further application with respect to a monetary order for unpaid rent. The Decision also ordered the landlord to keep \$50.00 of the security deposit for recovery of the filing fee and ordered the landlord to return the balance to the tenant or otherwise deal with the balance pursuant to Section 38 of the *Act*.

The landlord further testified that the tenant provided a forwarding address in writing to the landlord on September 3, 2011, and the rental unit was re-rented on September 15, 2011.

The landlord claims \$300.00 for unpaid rent for the month of July, 2011, \$600.00 for unpaid rent for the month of August, 2011 and recovery of the \$50.00 filing fee for the cost of this application.

### Analysis

I accept the testimony of the landlord that the tenant is in arrears of rent the sum of \$900.00. I further accept that a portion of the security deposit has already been ordered to be retained, and that \$250.00 of the security deposit remains in trust. The *Residential Tenancy Act* states that the landlord must return the security deposit in full or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. In this case, I find that the tenancy ended on September 3, 2011 and the tenant provided the landlord with a forwarding address in writing the same day. The

landlord applied for dispute resolution claiming against the security deposit on September 9, 2011, which is well within that 15 day period. Therefore, I find that the landlord has complied with Section 38 of the *Act*, and the landlord is entitled to keep the security deposit in partial satisfaction of the claim. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$250.00 security deposit in partial satisfaction of the claim, and I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$700.00. This order is final and binding on the parties and may be enforced.

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 23, 2011.

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Residential Tenancy Branch