



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent and authorization to retain the security deposit and pet damage deposit. Only the landlord appeared at the hearing. The landlord testified that he gave two copies of the hearing documents to the male tenant on June 6, 2016 at the rental unit.

On June 8, 2016 both parties participated in another dispute resolution proceeding (file number referenced on the cover page of this decision). With that decision, the landlord was provided an Order of Possession since the tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was unsuccessful. By way of that decision, the Arbitrator also made a finding as to the amount of unpaid rent as of May 2016. Since the landlord has already been provided an Order of Possession and the landlord confirmed that the tenants have since vacated the rental unit, I found it unnecessary to further consider granting the landlord an Order of Possession and the remainder of this decision pertains to the landlord's monetary claims only.

On June 14, 2016 the landlord filed an Amendment to an Application for Dispute Resolution to amend the claim for unpaid rent to that found by the Arbitrator of the previous hearing; and, add claims for loss of rent for June 2016 and July 2016 as well as utilities for the periods of April – June 2016 and July 2016. During the hearing, the landlord testified that the Amendment and related documents were sent to the tenants via registered mail on June 14, 2016; however, he did not have the registered mail tracking numbers to provide me at the hearing. I proceeded to hear the landlord's claims, as amended, conditional upon being satisfied the tenants were sufficiently served with the amended claim. I ordered the landlord to provide me with copies of registered mail receipts after the teleconference call ended, which he did. The landlord provided a single registered mail receipt, including tracking number, indicating that a registered mail package was sent to both tenants in a single registered mail envelope.

on June 14, 2016. A search of the registered mail tracking number shows that the female tenant signed for the registered mail on June 15, 2016.

Where a respondent does not appear at the hearing, the applicant bears the burden to prove that the respondent was served with notification of the hearing and the claims against them. Where there is more than one party named as a respondent, the applicant bears the burden to prove that each respondent was served. Section 89 provides for the ways an Application for Dispute Resolution must be served upon the respondent. Section 89(1) of the Act provides that a monetary claim must be served upon each respondent either personally or by registered mail. It is not sufficient to give one respondent the hearing documents and expect that respondent to serve a copy to the other respondent. Accordingly, a hearing package should have been given to each tenant or a registered mail envelope sent to each tenant separately. I am satisfied that the male tenant was served with the original claim on June 6, 2016 by way of personal service.

An amended monetary claim must also be served upon each respondent as provided under Rule 4.6 of the Rules of Procedure. Rule 4.6 provides:

**4.6 Serving an Amendment to an Application for Dispute Resolution**

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure. ‘

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

[Reproduced as written with my emphasis underlined]

In this case, the amended claim was not received by each tenant and the tenant who did receive the registered mail received it less than 14 days before the hearing. AS provided under paragraph (c) under the definition of “days” in the Rules of Procedure the day the mail was received and the day of the hearing must be excluded in calculating the number of days.

In light of the above, I am not satisfied that either tenant was served with the Amendment claim in a manner that complies with the Act and the Rules of Procedure. Therefore, I do not give further consideration to the amended claim.

Since I have declined to hear the amended claim, I proceed to consider the landlord's original claim against the male tenant only. Accordingly, the Monetary Order issued with this decision names the male tenant only.

#### Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent up to and including the month of May 2016?
2. Is the landlord authorized to retain the tenants' security deposit and pet damage deposit?

#### Background and Evidence

The tenancy commenced in 2011 and the tenants paid a security deposit \$750.00 and a pet damage deposit of \$750.00. The tenants were required to pay rent of \$1,500.00 on the first day of every month.

As provided in the previous dispute resolution decision, the tenants began paying rent of \$1,545.00 starting January 1, 2015 which the Arbitrator held to be an unlawful rent increase in the absence of serving the tenants with a proper notice of the rent increase. As provided in the previous decision, the tenants owe rent of \$2,750.53 for the months up to and including the month of May 2016 after deducting the unlawful rent increase.

#### Analysis

Based upon the undisputed evidence before me, and given the finding of Arbitrator Plenart on June 8, 2016, I award the landlord unpaid rent of \$2,750.53 for the months up to and including May 2016. I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the security deposit and pet damage deposit in partial satisfaction of the unpaid rent.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent – up to and including May 2016	\$2,750.53
Filing fee	100.00
Less: security deposit and pet damage deposit	<u>(1,500.00)</u>
Monetary Order	\$1,350.53

Since I did not deal with the landlord's other claims, as indicated on the amended application, the landlord remains at liberty to seek recovery of those amounts by way of another Application.

### Conclusion

By way of this decision, the landlord has been awarded unpaid rent up to and including the month of May 2016. The landlord has been given leave to reapply for any other damages or losses suffered as a result of this tenancy. The landlord has been authorized to retain the security deposit and pet damage deposit in partial satisfaction of the unpaid rent and has been provided a Monetary Order for the balance of \$1,350.53 to serve and enforce upon the male tenant.

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: July 06, 2016

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Residential Tenancy Branch