



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, OPC, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to hear the landlord's application for an Order of Possession and a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit.

### Preliminary matters

The landlord named two co-tenants in filing this application. Both respondents appeared at the August 17, 2011 hearing; however, the male tenant stated he had not been served with the hearing documents and was only aware of the hearing when the female tenant phoned him the day before the conference call. I determined that the landlord had served only one hearing package and that it was not sent to an address where the male tenant resides or the forwarding address provided by the male tenant. I found the male tenant had not been sufficiently served with the hearing documents and I amended the application to exclude him from this proceeding. The male tenant then chose to leave the teleconference call and the female tenant remained on the line.

The female tenant argued that she was not sufficiently served with the landlord's application either. The landlord had sent her the hearing documents care of her grandmother's address. The landlord submitted that he was given the tenant's grandmother's address by the female tenant as an address at which she could receive mail. The tenant argued that the address was provided to the landlord when she could not retrieve her mail at the rental property but that she did not provide the address to the landlord so that he could serve her hearing documents. The female tenant acknowledged receiving the hearing package a couple of weeks before the scheduled hearing.

Having heard the landlord was given the tenant's grandmother's address by the tenant for purposes of receiving mail and that the tenant had in fact received the hearing

documents a couple of weeks prior to the hearing, I deemed the female tenant sufficiently served under section 71 of the Act.

In light of the above, I proceeded to hear from the landlord and give him the opportunity to present his claims. After hearing from the landlord the tenant argued that she required more time to gather evidence in response to the landlord's claims. The tenant's request for an adjournment was granted since the tenant stated she had received the hearing documents only a couple of weeks prior to the hearing.

The tenant provided a different mailing address for purposes of receiving the Notice of Adjourned Hearing. The tenant was informed that a Notice of Adjourned Hearing would be sent to that address and I cautioned the tenant that if she did not appear for the reconvened hearing I would proceed without her. The tenant did not appear at the reconvened hearing.

At the reconvened hearing the landlord verbally requested that his monetary claim be increased. I did not permit the landlord to amend his monetary claim as the tenant had not been sufficient notified of any additional claims. The landlord was informed of his right to make another application for losses incurred after the tenancy ended.

#### Issue(s) to be Decided

1. Is it necessary to issue an Order of Possession?
2. Has the landlord established an entitlement to compensation for damage to the rental unit?
3. Has the landlord established an entitlement to unpaid rent?
4. Has the landlord established an entitlement to damage or loss under the Act, regulations or tenancy agreement?
5. Is the landlord authorized to retain the security deposit?

#### Background and Evidence

The one year fixed term tenancy commenced April 1, 2011 and the tenants were required to pay rent of \$650.00 on the 1<sup>st</sup> day of every month. The tenants paid a security deposit of \$325.00. The tenants failed to pay rent for June or July 2011. The tenants vacated the rental unit in the second half of July 2011 although the exact date was unknown as the tenants did not return the keys to the landlord or the building manager.

In filing the application the landlord requested a Monetary Order in the amount of \$4,990.00; however, the breakdown of his monetary claim totals less than that amount. Below, I have summarized the landlord's individual monetary claims as submitted with the application.

<u>Description</u>	<u>Reason</u>	<u>Amount</u>
Unpaid rent – July 2011	Unpaid	650.00
Hydro bill	Bill in landlord's name. Amount remains unpaid by tenants.	115.02
Strata Penalty	Penalty issued by strata for disturbance by tenants.	50.00
Fee for serving Notices to End Tenancy	Compensation for landlord's time to serve Notices.	20.00
Anticipated damage to rental unit	Damages not yet assessed. Estimated \$2,000.00	2,000.00
Anticipated hydro bills for June and July 2011	Bills not yet received at time of filing application.	Unspecified
Penalty	For breach of fixed term tenancy.	Unspecified
Loss of rent – August 2011	Anticipated loss of rent	650.00
Travel costs from landlord's home to rental unit	Mileage rate of \$.50/km for anticipated travelling to serve hearing documents upon tenants, evicting tenants, and showing unit to prospective tenants	450.00
Anticipated garbage removal	Anticipated that tenants would leave possessions in unit.	Unspecified
TOTAL		\$ 4,585.02

In support of the landlord's claims, the landlord provided copies of: the tenancy agreement; two 10 Day Notices to End Tenancy for Unpaid Rent dated June 30, 2011 and July 2, 2011; an undated 1 Month Notice to End Tenancy for Cause with an effective date of July 30, 2011; correspondence regarding noise complaints received about the rental unit; a hydro bill for the period April 21 – May 31, 2011; a warning letter to the tenants dated May 30, 2011; and, some of the landlord's bank statements.

At the reconvened hearing, the landlord presented the building manager a witness to refute a statement made by the tenant at the first hearing that the keys had been returned to the building manager. The building manager stated that he was not given

any keys by the tenants and that he was told by the tenants that they had lost their keys.

### Analysis

When tenants vacate a rental unit the landlord regains possession of the unit. Since the tenants have vacated the rental unit, an Order of Possession is no longer required and I do not issue one with this decision.

Upon consideration of all of the evidence before me, I make the following findings and provide the following reasons with respect to the landlord's monetary claims.

This tenancy involved two co-applicants. Co-applicants are jointly and severally liable for debts and damages related to the tenancy. The landlord can recover the full amount of damages or losses from all or any one of the tenants. The landlord has served only one of the co-tenants with the documents for this proceeding. Accordingly, that tenant will be ordered to pay all of the debts associated to this tenancy to the landlord, as determined below, and it will be upon that tenant to recover part of that debt from the other tenant.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

### ***Unpaid rent and loss of rent***

I accept the landlord's undisputed evidence that the tenants failed to pay rent of \$650.00 for the months of June and July 2011 and the landlord is entitled to recover the unpaid rent from the tenant. Since I heard that the tenants did not return the keys to the landlord or building manager, vacated at the end of July 2011, and having heard the rental unit was vacant in August 2011, I also award the landlord loss of rent for August 2011.

### ***Hydro costs***

Upon review of the tenancy agreement I accept that the tenants were responsible for their own hydro costs. The hydro bill indicates that the account was closed as of May 31, 2011. The landlord has substantiated the amount claimed with a copy of the hydro bill and I grant the landlord's request for \$115.02 for hydro costs up to May 31, 2011.

***Strata fine***

In support of the claim for the strata fine, the landlord provided a copy of an email from the strata dated June 16, 2011 informing the landlord that the tenants have not complied with the Strata Corporation by-laws and the "Strata Council has levied a fine of \$50.00 against your tenant(s) for non-compliance of the Strata Corporation bylaws." The email goes on to inform the landlord that he is ultimately responsible for any outstanding fines that may be levied against his tenants. Further, the email indicates that the strata had not received a completed Form K (Notice of Tenant's Responsibilities) from the landlord as required under the Strata Property Act.

The landlord's warning letter to the tenants, dated May 30, 2011, informs the tenants that their behaviour has been reported as disturbing and that they must cease such behaviour; however, the tenants are not notified of the strata by-law providing for fines for disturbances.

Upon review of the tenancy agreement and addendum I find there is no term with respect to strata by-laws or fines or that the tenants would be held responsible for fines levied by the strata.

Based on the above, I find the landlord did not notify the tenants of the provisions of the strata by-laws at the beginning of the tenancy or during the tenancy. While I accept the undisputed evidence that the tenants disturbed other occupants of the property, I find the landlord's failure to notify the tenants of the strata by-laws demonstrates that the landlord did not take reasonable steps to minimize losses associated to fines he may be held responsible to pay by the strata. Therefore, I dismiss the landlord's claims for recovery of strata fines.

***Other claims***

As provided above, in order to establish an entitlement to compensation, the party making the claim must have incurred a loss. Accordingly, anticipated losses are not recoverable. At the time of filing this application, the tenants had not vacated and any damages to the unit were not yet determined. Nor did the landlord amend the application after the tenancy ended to claim for actual losses associated to damages, cleaning or subsequent hydro costs. Therefore, the requests for compensation for

anticipated damage, garbage removal and subsequent costs were premature and are dismissed with leave to reapply.

The landlord's request for a penalty for breach of the fixed term is denied. The Act does not provide for penalties payable from one party to another, rather, the Act provides for recovery of actual damages or loss incurred as a result of a breach of the tenancy agreement.

With respect to claims associated to serving notices to tenants and preparing for dispute resolution, those are ordinary business costs of a landlord. Further, the landlord's decision to conduct business from another town is a decision the landlord made and a decision for which the landlord must bear the costs associated to it. Therefore, I dismiss the landlord's request to recover time and mileage associated to serving documents and travelling to the rental unit.

With respect to preparing for and participating in a dispute resolution proceeding, the only amount recoverable under the Act is the filing fee. Since the landlord's application had merit I award the filing fee to the landlord.

I authorize the landlord to retain the security deposit in partial satisfaction of the amounts awarded to the landlord. The landlord is provided a Monetary Order calculated as follows:

<u>Description</u>	<u>Award</u>
Unpaid rent – July 2011	650.00
Loss of rent – August 2011	650.00
Hydro costs up to May 31, 2011	115.02
Filing fee	50.00
Less: security deposit	<u>(325.00)</u>
MONETARY ORDER	\$1,790.02

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as an Order of that court.

### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,790.02 to serve upon the tenant. As

provided in this decision, the landlord's claims for anticipated damages or losses have been dismissed with leave.

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: September 22, 2011.

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Residential Tenancy Branch