



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPR, MNR, (MND), MNSD, FF

### **Introduction**

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation for a loss of rental income, for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. At the beginning of the hearing, the Landlord said the tenancy has ended and as a result, he withdrew his application for an Order of Possession.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") on October 20, 2011 by registered mail. Section 90 of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

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

1. Are there rent and utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income?
3. Is the Landlord entitled to compensation for cleaning and repair expenses?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### **Background and Evidence**

This tenancy started on June 1, 2011. The Landlord said it was a one year fixed term tenancy however there is no written tenancy agreement. The Landlord said he believed the Tenant moved out on or about October 24, 2011 and did not give him a forwarding address. Rent is \$1,250.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Landlord said the Tenant was also responsible for paying electricity. The Tenant paid a security deposit of \$625.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for October 2011 when it was due and as a result, on October 3, 2011, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord said the Tenant paid \$740.00

on October 4, 2011. The Landlord also said the Tenant has not paid a utility account in the approximate amount of \$400.00. The Landlord further claimed that the Tenant caused damages to a wall and door and did not clean the carpets at the end of the tenancy.

### **Analysis**

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover unpaid rent in the amount of \$510.00. However, the Landlord provided no evidence in support of his claim for unpaid utilities and as a result, that part of his claim is dismissed without leave to reapply.

The Landlord also sought to recover compensation for a loss of rental income for the month of November 2011. The Landlord said he immediately advertised the rental unit for availability in an online publication however he provided no evidence of that. Consequently, the Landlord's application for compensation for a loss of rental income for November 1 – 14, 2011 is dismissed without leave to reapply due to a lack of evidence. I find that the Landlord's application for compensation for a loss of rental income for the balance of November 2011 is premature as there is always a possibility that the Landlord could re-rent the rental unit for part of November 2011. Consequently, the Landlord's application for compensation for the balance of November 2011 is dismissed with leave to reapply.

The Landlord also sought to recover compensation for cleaning and repair expenses however he provided no evidence in support of this part of his claim and it is unclear if he has in fact incurred any damages. Consequently, I dismiss this part of the Landlord's claim with leave to reapply. I find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee he paid for this proceeding with the result that he is entitled to a total monetary award of \$560.00.

***I order the Landlord pursuant to s. 38(4) of the Act to keep \$560.00 of the Tenant's security deposit in full satisfaction of the monetary award.*** The Landlord must hold the balance of the Tenant's security deposit of \$65.00 in trust on the terms set out under s. 38 of the Act as follows:

- If the Tenant does not provide the Landlord with a forwarding address in writing within 1 year of the end of the tenancy, the Tenant forfeits her right to receive the balance of the security deposit and the Landlord may keep it;
- If the Tenant provides the Landlord with her forwarding address in writing within 1 year of the end of the tenancy, then within 15 days of receipt of the forwarding address, the Landlord must do one of the following things:
  - return the balance of the security deposit to the Tenant;

- get the Tenant's written consent to keep the balance of the security deposit; or
- file a further application for dispute resolution to make a claim against the balance of the security deposit.

### **Conclusion**

The Landlord's application for an Order of Possession is withdrawn. The Landlord's application for unpaid rent and to keep part of the security deposit is granted. The Landlord's application for unpaid utilities and for a loss of rental income for the period, November 1 – 14, 2011, is dismissed *without* leave to reapply. The Landlord's application for compensation for a loss of rental income for the period, November 15 – 30, 2011, and for cleaning and repair expenses is dismissed *with* leave to reapply.

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 14, 2011.

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Residential Tenancy Branch