



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities; 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; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The landlord attended the conference call hearing, provided affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail separately, neither of the tenants attended. The landlord provided evidence of having sent the documents by registered mail on October 20, 2011, and I find that the landlord has established that the tenants have been served in accordance with the *Residential Tenancy Act*.

All testimony and the evidence provided by the landlord have been reviewed and are considered in this Decision.

During the course of the hearing, the landlord advised that the tenants abandoned the rental unit on October 29, 2011 and therefore the landlord's application for an Order of Possession is withdrawn.

### 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?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

The landlord testified that this fixed term tenancy began on July 1, 2011 and was to expire on December 31, 2011. Rent in the amount of \$1,550.00 per month was payable in advance on the 1<sup>st</sup> day of each month. No security deposit or pet damage deposit was collected. The landlord also testified that a garage door deposit was required under the tenancy agreement, but it was not collected from the tenants. A copy of the tenancy agreement was provided in advance of the hearing.

The landlord also testified that the tenants paid \$1,050.00 for rent for the month of September, 2011, leaving a balance owing of \$500.00. The landlord stated that the tenants abandoned the rental unit on or about October 29, 2011 without any notice to the landlord. The landlord claims unpaid rent for the months of September and October, 2011 in the amount of \$1,550.00.

The landlord also provided a copy of the tenancy agreement which states:

- “2. Rent to be paid BEFORE banks close on the first of each month/rental move-in date.
- 3. A 55.00 late fee will be charged if the rent is not paid on the 2<sup>nd</sup> day of the due date and another \$55.00 charged after 14 days. Post dated cheques not cleared by the bank and returned will be subject to \$125 fee to cover interest/bank charges.”

The landlord testified that a move-in condition inspection report was completed at the outset of the tenancy, but the form was left for the tenants to sign and return and the tenants did not return it to the landlord.

The landlord attended the rental unit on October 30, 2011 after receiving information from another tenant that the tenants had moved out of the rental unit. The landlord discovered that the door to the rental unit had been kicked in and a lock was bent. The landlord also testified to other damages to the rental unit.

The landlord also testified that the tenants have been returning to the rental complex to collect mail, but have not returned the apartment keys, the garage clicker, the main building door keys, or the mail box keys.

### Analysis

In the circumstances, I find that the landlord and the parties entered into a fixed term tenancy to commence on July 1, 2011 and to expire on December 31, 2011. I further

accept the evidence of the landlord that the tenants failed to pay rent in full, leaving a balance of \$500.00 outstanding for the month of September, 2011. I further accept the testimony of the landlord that the tenants vacated the rental unit on October 29, 2011 without paying rent for that month and without any notice to the landlord, and the landlord is entitled to recovery of rent for the month of October, 2011 in the amount of \$1,550.00.

The landlord also claims loss of rental income for the month of November, 2011. The *Residential Tenancy Act* and common law require the landlord to provide evidence of mitigation by attempting to re-rent the rental unit, which I have no evidence of. However, I find that if the tenants had legally ended a month-to-month tenancy by providing notice to the landlord to end the tenancy, the notice would not have legally taken effect until the end of November, 2011, and therefore, the landlord is entitled to loss of revenue for that month.

With respect to late charges, I accept that the tenancy agreement provides for \$55.00 for each late payment made after the 2<sup>nd</sup> day of the due date, and another \$55.00 for payments not made within 14 days, however the regulations specify that the landlord may only collect \$25.00 for each late rent payment and \$25.00 for each N.S.F. cheque plus the proven amount of any bank fees charged to the landlord. Therefore, I find that the tenants are obligated to pay late fees in the amount of \$25.00 for each of the months of September, October and November, 2011, for a total of \$75.00.

With respect to the landlord's testimony and evidence of damages, the landlord's application was filed prior to the end of the tenancy. In the application, the landlord had claimed a monetary order for damage to the unit, site or property, but crossed that sentence out and initialled beside it. The *Residential Tenancy Act* requires that a party making a claim against another party must serve notice of that claim upon the other party. I find that the landlord has not made an application for damage to the unit, site or property, the landlord has not given the tenants any notice of a claim for damages to the unit, site or property, and therefore, the landlord is not at this time entitled to advance those claims in the absence of such notice.

The landlord has also applied for an order permitting the landlord to keep the security deposit or pet damage deposit, but provided testimony that none was collected. The *Act* states that a landlord is not required to return a security deposit that was not collected, and therefore, the landlord has no deposit to keep. The landlord's application to keep it is therefore dismissed.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

In summary, I find that the landlord has established a claim for unpaid rent for the month of September, 2011 in the amount of \$500.00, unpaid rent for the month of October, 2011 in the amount of \$1,550.00, loss of revenue for the month of November, 2011 in the amount of \$1,550.00, late fees in the amount of \$75.00, and recovery of the \$50.00 filing fee, for a total of \$3,725.00.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,725.00. This order is final and binding on the parties and may be enforced.

The landlord's application for an order permitting the landlord to keep the security deposit is hereby dismissed.

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 18, 2011.

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Residential Tenancy Branch