



# 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 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, and to recover the filing fee from the tenants for the cost of this application.

The landlord attended the conference call hearing, provided evidence in advance of the hearing and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 12, 2012, the tenants did not attend. The landlord provided evidence of having sent registered mail to each of the tenants, and testified that they were mailed on January 12, 2012. I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the landlord advised that the tenants vacated the rental unit on January 17, 2012, and therefore, the application for an Order of Possession is withdrawn, and I dismiss that application without leave to reapply.

All evidence and testimony provided have been reviewed and are 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 fixed term tenancy began on July 15, 2011 and was to expire on July 15, 2012. Rent in the amount of \$1,300.00 per month was payable at the end of each month, not in advance. The tenants had been paying rent for the first half of each month on the 15<sup>th</sup> of the month, and for the last half of each month on the 30<sup>th</sup> of the month.

At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$650.00, and no pet damage deposit was collected. The parties did not complete a move-in or a move-out condition inspection report. The rental unit is actually 2 separate rental units in the lower level of the landlord's house that the tenants rented jointly. When the rental units are rented separately, the rent is \$700.00 per month for one unit and \$600.00 per month for the other. The landlord resides in the upper level of the house. The tenants and the landlord signed a tenancy agreement which was provided for this hearing.

The landlord also testified that the tenants did not pay the rent for the last half of December, 2011, and didn't pay any rent at all for the month of January, 2012. The landlord expected \$650.00 for rent on December 30, 2011 to cover the period from December 16 to December 31, 2011, and also expected to receive \$650.00 on January 15, 2012. On December 30, 2011 the landlord attempted to contact the tenants about collecting the rent but the tenants did not answer the phone or the door. On December 31, 2011 the landlord again attempted to contact the tenants but again there was no answer to the door or the phone. On January 1, 2012 the landlord called and one of the tenants answered the phone and advised the landlord that the bank was closed and the tenant could not access the money. The tenant agreed to talk to the other tenant to discuss when rent would be paid. On January 3, 2012, the landlord called and went to the rental unit and again received no answer to the phone or the door. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit that day, and provided a copy for this hearing. The notice is dated January 3, 2012 and contains an expected date of vacancy of January 16, 2012. The notice states that the tenants failed to pay rent in the amount of \$650.00 that was due on December 30, 2011.

On January 9, 2012 the landlord posted a notice to the door of the rental unit to inspect the rental unit because during the night of January 8, 2012 the landlord heard footsteps and feared the tenants were moving. The notice stated that the landlord would be inspecting the rental unit on January 10, 2012 at 7:00 p.m. One of the tenants called the landlord upset and stated that the landlord would not be granted access to the rental unit, the tenants were moving out anyway, and told the landlord to keep the security deposit. The landlord had police assistance on January 10, 2012 for that inspection, but

the police did not assist; the landlord was able to inspect one of the suites, but not the other.

The tenants moved from the rental unit leaving keys in the postal box for the landlord. The landlord called the tenants about unwanted items left in the rental unit, and the tenants responded that they took everything they wanted and would not be returning. The tenants did not provide a forwarding address in writing to the landlord.

The landlord claims unpaid rent for half of the month of December, 2011 as well as rent for the month of January, 2012, and recovery of the \$50.00 filing fee for the cost of this application.

### Analysis

In the circumstances, I find that the tenants are required to pay rent for the last half of December, 2011 and the landlord has established a claim for \$650.00. With respect to the month of January, 2012, I refer to Residential Tenancy Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent which states as follows:

“These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the *Act* or tenancy agreement. Whether or not the breach is fundamental depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach.

“The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord’s claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.”

In this case, the tenancy agreement states that rent is \$1,300.00 per month payable on the 15<sup>th</sup> day of each month, and goes on to say that the tenants wish to pay bi-weekly on the 15<sup>th</sup> and 30<sup>th</sup> of each month. I find that rent is due on the 15<sup>th</sup> day of each month in the amount of \$1,300.00, and the landlord agreed to allow the tenants to pay half the rent on that day and the other half on the 30<sup>th</sup> day of each month. I further find that the tenancy agreement is for a fixed term, and the tenants’ failure to pay rent on December 30, 2011 was a fundamental breach of the agreement. I have no evidence before me of what efforts the landlord made to re-rent the rental unit, however, the tenants remained

in the rental unit until the 17<sup>th</sup> of January, 2012, and I find that the landlord is entitled to recover rent for the first half of January, 2012 while the tenants were in possession of the rental unit, and for the last half of January, 2012 as loss of revenue due to the breach of the agreement by the tenants.

I further find that the landlord has established a right 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, the landlord's application for an Order of Possession is hereby dismissed without leave to reapply as withdrawn.

I hereby order the landlord to keep the security deposit of \$650.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the difference in the amount of \$700.00 as against both tenants, jointly and severally. 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: February 02, 2012.

---

Residential Tenancy Branch