



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MND, 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 a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fees from the tenant for the cost of this application.

An agent for the landlord company attended the conference call, gave 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 on April 18, 2012, the tenant did not attend. The landlord's agent provided evidence of having mailed the documents by registered mail, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord's agent also testified that the tenant has moved from the rental unit and therefore an Order of Possession is not required; the landlord withdraws that portion of the application.

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

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- 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's agent testified that this fixed term tenancy began on December 1, 2011 and expires on May 31, 2012. Rent in the amount of \$700.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 as well as a pet damage deposit in the amount of \$200.00. A copy of the tenancy agreement was provided for this hearing.

The landlord's agent further testified that the tenant failed to pay rent in the amount of \$700.00 that was due on April 1, 2012. The landlord served the tenant with a notice to end tenancy on April 3, 2012 by posting it to the door of the rental unit. A copy of the notice was provided for the hearing and it contains an effective date of vacancy of April 16, 2012. The landlord's agent testified that the tenant moved from the rental unit on or about May 1, 2012, and the landlord's application for an Order of Possession is withdrawn.

The tenant, however, has not paid the rental arrears for the month of April. The landlord also claims rent in the amount of \$700.00 for the month of May, 2012, being the end of the fixed term. The landlord has not advertised the rental unit for rent because it has sold and the conditions are to be removed May 14, 2012 and the deal closes on May 31, 2012.

The landlord also claims unpaid utilities. A copy of a tenant ledger was provided for this hearing and it states that gas and electricity charges totalling \$240.41 remain outstanding. No bills to substantiate the ledger have been provided.

The landlord's agent further testified that the tenant did not leave the keys for the rental unit behind, and the cost was about \$68.00 or \$70.00, although no proof of the cost has been provided.

The tenant was allowed one dog, but the tenant also had a cat and a bird and didn't clean the carpet at the end of the tenancy; alot of stains were left behind. The landlord's agent had the carpets cleaned but does not yet have an invoice and stated that the cost was quoted to be over \$250.00. The landlord also claims cleaning costs in the amount of \$250.00 but no proof of that cost has been provided.

The landlord's agent testified that a move-in condition inspection report was completed at the beginning of the tenancy, but no copy was provided for this hearing. A move-out condition inspection report was not completed. The tenant had called the landlord's agent stating that the tenant could pay the rent, but the landlord's agent replied that the

tenant could pay the rent but the eviction process had already started and the tenant had to move out by April 16, 2012. The landlord's agent was told that the tenant had moved out by another tenant, and the landlord's agent attended the rental unit on May 1, 2012. The tenant had moved by that date.

### Analysis

In the circumstances, I am satisfied that the tenant is in arrears of rent the sum of \$700.00 for the month of April, 2012. I am not satisfied, however, that the tenant is liable for rent for the month of May, 2012 even though the parties entered into a fixed term tenancy until May 31, 2012. The Act requires that a person making a claim do whatever is reasonable to mitigate or reduce any loss suffered. The landlord has not made any effort to re-rent the rental unit, and putting the rental unit for sale does not constitute mitigation.

With respect to the landlord's application for unpaid utilities, the landlord has provided a tenant ledger which shows debits and credits for rent and utilities, but no evidence to substantiate the amount of utilities. Therefore, I find that the landlord has failed to establish a claim for unpaid utilities as against the tenant.

With respect to the landlord's application for a monetary order for damage to the unit, site or property, I find that the landlord has failed to establish any claim. In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to reduce, or mitigate such damage or loss.

Also, the *Act* requires the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations unless the tenant has abandoned the rental unit. In this case, I am satisfied that the tenant did not advise the landlord of the tenant's intention to leave the rental unit on or about May 1, 2012 and the notice to end tenancy contained an effective date of vacancy of April 16, 2012. However, I find that the landlord has not provided any evidence of damages, nor any proof of the value of such damages, and has therefore failed to establish a claim.

The *Act* also states that a landlord may only make a claim against a pet damage deposit for damages caused by a pet. In this case, the landlord testified that the carpet was stained, and the tenant had a dog, a cat and a bird. Having found that the landlord has not established a claim for damages, I cannot find that the landlord has established a claim against a pet damage deposit. However, the *Act* also states that where a tenant is ordered to pay an amount to a landlord, the amount may be deducted from any security deposit or pet damage deposit held in trust by the landlord, and I find it reasonable to make such an order in this case.

Having found that the tenant owes the landlord \$700.00, I find that the landlord is entitled to keep the security deposit and pet damage deposit in partial satisfaction of the claim. Since the landlord has been partially successful with the application, 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 as withdrawn.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

I order the landlord to keep the pet damage deposit and security deposit in the amount of \$550.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$200.00.

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: May 18, 2012.

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Residential Tenancy Branch