



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:46 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the agent) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The agent testified that her husband handed the tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of \$1,100.00 on May 2, 2012. The agent testified that her husband also handed a copy of the landlord's dispute resolution hearing package to the tenants on May 11, 2012. I am satisfied that the landlord served these documents to the tenants in accordance with the *Act*.

At the commencement of the hearing, the agent testified that the tenants vacated the rental unit on May 31, 2012. She withdrew the landlord's application for an Order of Possession as the landlord has possession of the rental unit. The landlord's application for an Order of Possession is withdrawn.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

Although this periodic tenancy was scheduled to begin on March 15, 2012, the agent said that the tenants actually took occupancy on March 8, 2012. Monthly rent was set at \$1,100.00, payable in advance on the first of each month. According to the terms of the residential tenancy agreement entered into written evidence by the landlord, the tenants were responsible for 1/3 of the hydro and gas. The landlord continues to hold the tenants' \$550.00 security deposit paid on or about March 15, 2012 and \$550.00 pet damage deposit paid some time after the tenancy commenced.

The landlord set out the amounts identified in her application for a \$3,140.00 monetary Order in a monetary order worksheet which included the following items:

<b>Item</b>	<b>Amount</b>
Unpaid April 2012 Rent	\$40.00
Returned NSF Cheque for Furniture Purchase from Landlord April 2012	700.00
Returned NSF Cheque for Furniture Purchase from Landlord May 1, 2012	700.00
Unpaid May 2012 Rent	1,100.00
Unpaid Furniture Payment for June 2012	600.00
<b>Total Monetary Award Requested</b>	<b>\$3,140.00</b>

At the hearing, the agent also referred to copies of utility bills entered into written evidence by the landlord. She asked for reimbursement for 1/3 of the gas and hydro bills, although she was uncertain of the amounts claimed because the billing periods were not clearly identified on each of these bills.

The agent testified that the residential tenancy agreement between the parties rented the premises to the tenants as an unfurnished rental unit. This was confirmed in the wording of the tenancy agreement entered into written evidence by the landlord. As the landlord's furniture in the house was for sale and the tenants needed furniture, the parties entered into a separate agreement whereby the tenants committed to make monthly payments to the landlord. The agent testified that the first two of the tenants' cheques for furniture were returned as NSF. She said that the tenants damaged the rental unit during their tenancy and took the landlord's furniture without paying for it.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the undisputed evidence presented by the landlord and her agent, I am satisfied that the landlord has demonstrated entitlement to a monetary award of \$40.00 for unpaid rent for April 2012 and \$1,100.00 for May 2012.

The landlord's application for dispute resolution and the monetary order worksheet provided by the landlord gave no indication that the landlord was also seeking a monetary award for unpaid utilities. The landlord did enter into written evidence copies of utility bills. However, I am not satisfied that the landlord has given the tenants notice that she was seeking a monetary award for these items. Similarly, I do not find that the tenants have been provided with an adequate opportunity to respond to the case against them with respect to the agent's attempt at the hearing to obtain a monetary award for unpaid utility bills. As I am not satisfied that this element of the landlord's request for compensation was properly before me as part of the landlord's original application for dispute resolution, I dismiss the landlord's request for unpaid utilities with leave to reapply.

Turning to the landlord's claim for the tenants' failure to pay for furniture, I note that section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that the agreement between the parties with respect to the tenants' purchase of furniture from the landlord was separate from their residential tenancy agreement. As noted above, the premises were rented unfurnished. The landlord did not provide evidence to demonstrate that any amendment was entered into with respect to the residential tenancy agreement to take into account the tenants' purchase of furniture that the landlord was in the process of selling to the public. Under these circumstances, I find that the parties entered into a separate contract with respect to the purchase of the landlord's furniture. Any alleged failure to comply with the terms of this additional contract entered into between the parties extends beyond the initial residential tenancy agreement entered into between the parties and lies outside the *Residential Tenancy Act*.

For these reasons, I find that I am without jurisdiction to consider the landlord's claim for recovery of NSF cheque payments made by the tenant in April and May 2012 and for

the tenants' alleged failure to make furniture payments due in June 2012. I therefore have no jurisdiction to render a decision with respect to the landlord's application for a monetary award for the tenants' alleged failure to pay for the landlord's furniture.

I allow the landlord to retain the tenants' security and pet damage deposits plus interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

As the landlord has been successful in this application, I find that the landlord is entitled to recover her filing fee for this application from the tenants.

The agent also testified that the tenants damaged the rental unit during their tenancy and removed some of the landlord's belongings at the end of their tenancy. As these issues were not part of the landlord's original application for dispute resolution and only became apparent once the landlord gained possession of the rental unit on May 31, 2012, the landlord is at liberty to apply for a monetary award for damage and loss that became apparent after the tenancy ended.

#### Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the tenants' security deposit:

Item	Amount
Unpaid April 2012 Rent	\$40.00
Unpaid May 2012 Rent	1,100.00
Less Security and Pet Damage Deposits	-1,100.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$90.00</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn.

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: June 06, 2012

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Residential Tenancy Branch