



# 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 dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep the pet and or security deposit(s), for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord affirmed the parties entered into a written month to month tenancy that began at the beginning of February 2012. Rent was payable on the first of each month in the amount of \$1,600.00. At the outset of the tenancy the Tenant paid \$800.00 as the security deposit and \$800.00 as the pet deposit. A move in condition inspection report was completed February 4, 2012 however the Tenant refused to attend the move out condition inspection.

The Landlord stated that on May 28, 2012 the Tenant provided her with written notice to end her tenancy effective June 30, 2012. Then on the first of June the Landlord said the Tenant told her she was not going to pay rent for June 1, 2012 because she did not trust the Landlord to return her deposits. The Landlord personally served the Tenant with a 10 Day Notice on June 2, 2012, in the presence of a witness.

The Landlord submitted that she advertised the unit as soon as she received the Tenant's notice however the Tenant refused her access to show the unit to prospective tenants so she is seeking lost rent for July as well as June rent.

The Landlord confirmed the Tenant vacated the property on June 30, 2012 however she refused to attend the move out inspection even though the Landlord gave her four opportunities to attend. She advised the Tenant did not move out by 1:00 p.m. and did not return the keys to her.

The Tenant affirmed she did not pay rent on June 1, 2012 and that she occupied the unit until June 30, 2012. She also confirmed that she did not return the keys because she lost them and that she has not provided the Landlord with her forwarding address in writing, although she provided her new address during her testimony at the hearing.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7 of the *Act*.

**Order of Possession** – The evidence supports the Tenant has vacated the unit and the Landlord has regained possession. Therefore an Order of Possession is no longer required.

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$1,600.00 for June 1, 2012, pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

Section 21 of the *Act* stipulates that a tenant must not apply a security deposit or pet deposit as rent unless the landlord gives written consent to do so. In this case the Landlord did not provide written consent to use the deposits as rent.

Based on the aforementioned, I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the Landlord has met the burden of proof and I award her a monetary claim of **\$1,600.00** for June 1, 2012 unpaid rent.

**Loss of rent** – As noted above the Tenant was personally served the 10 Day Notice on June 2, 2012 and this tenancy ended on the effective date of June 12, 2012. Therefore, I find the Landlord is seeking loss of rent for July 1, 2012 given that the Tenant refused the Landlord access to show the unit to prospective tenants, as supported by the evidence which included copies of notes written by each party. The Landlord has not been able to re-rent the unit as of the time of this hearing. The Landlord did not regain

possession of the unit until late in the day June 30, 2012, and is now faced with having to clean the unit for prospective tenants.

Based on the aforementioned I find that the Landlord has succeeded in proving her loss, as listed above, and I approve her claim for **\$1,600.00** for loss of July 1, 2012 rent.

The Landlord has succeeded with her application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and pet deposit plus interest as follows:

Unpaid rent for June 1, 2012	\$1,600.00
Loss of rent for July 1, 2012	1,600.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$3,250.00</b>
<b>LESS:</b> Security Deposit \$800.00 + Interest \$0.00	-800.00
Pet Deposit \$800.00 + Interest \$0.00	<u>-800.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,650.00</u></b>

#### Conclusion

The Landlord has regained possession of the unit; therefore an Order of Possession has not been issued.

The Landlord has been awarded a Monetary Order for **\$1,650.00**. This Order is legally binding and must be served upon the Tenant.

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: July 03, 2012.

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Residential Tenancy Branch