



# Dispute Resolution Services

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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 tenant for the cost of this application.

The landlord made the application on July 16, 2012 and filed an Amended Application for Dispute Resolution on July 19, 2012. The landlord provided evidence of having served the tenant with the Landlord's Application for Dispute Resolution, evidence and notice of hearing by registered mail on July 18, 2012 and the Amended Application for Dispute Resolution and additional evidence by registered mail on July 19, 2012, and the agent for the landlord testified to the mailings and the contents of each registered mail package. I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

An agent for the landlord attended the conference call hearing and gave affirmed testimony. However, despite being served with the application, notice of hearing and evidence, the tenant did not attend. The line remained open for 10 minutes without any testimony being heard to allow the tenant sufficient time to dial into the conference call hearing, but no one attended on behalf of the tenant.

All evidence and testimony provided has been reviewed and is considered in this Decision. During the course of the hearing the landlord's agent testified that the tenant moved from the rental unit on July 31, 2012 and the application for an Order of Possession is withdrawn.

### Issue(s) to be Decided

- 1) Is the landlord entitled to a monetary order for unpaid rent or utilities?
- 2) 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

This fixed term tenancy began on February 1, 2012 and expires on January 31, 2013. Rent in the amount of \$1,800.00 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 \$900.00 which is still held in trust by the landlord. A copy of the written tenancy agreement was provided for this hearing.

The landlord's agent testified that the tenant had provided the landlord with post-dated cheques for each month for rent, but sent a text message to the landlord's agent stating that there were not sufficient funds in the tenant's bank account to cover the post-dated cheque for May, 2012, and asked that the landlord deposit the May and June rent cheques on June 1, 2012. The landlord's agent agreed, but the tenant contacted the landlord's agent again stating that there were not sufficient funds on June 1, 2012. No rent has been collected for May, June or July, 2012.

The landlord caused a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to be served on the tenant, which was served by registered mail. The landlord's agent testified that the tenant moved out of the rental unit on July 31, 2012 but has not provided a forwarding address.

The landlord's agent further testified that now that the rental unit is vacant, the owner is not sure whether or not it will be re-rented.

The landlord requests a monetary order for unpaid rent for May, June and July, 2012 in the amount of \$1,800.00 per month, less the security deposit of \$900.00 and requests recovery of the \$50.00 filing fee for the cost of this application. The landlord's agent also requested recovery of costs for registered mail.

### Analysis

I accept the testimony of the landlord's agent, and I have reviewed the tenancy agreement provided. It is clear that the parties entered into a fixed term tenancy, and the tenant has not complied with that agreement by failing to pay rent when it is due. I further find that the landlord and the landlord's agent have established a claim in the amount of \$5,400.00 in unpaid rent.

I am not satisfied that the landlord is entitled to a monetary order for loss of revenue for subsequent months, even though the parties entered into a fixed term tenancy because the landlord would be required under the *Act* to prove that the landlord did whatever

was reasonable to reduce the amount of loss suffered. The landlord is not yet certain whether or not the landlord will attempt to re-rent the rental unit and if it is re-rented, there is insufficient evidence before me that the landlord will suffer any loss; perhaps the unit will be re-rented for August 15, 2012, in which case the landlord would only be entitled to half a month's rent. If the landlord decides not to advertise the rental unit for rent, or sells the rental unit, the landlord would not be in a position to prove that the landlord did what is reasonable to re-rent.

With respect to the landlord's claim for recovery of the cost of registered mail, such claims are not recoverable under the *Residential Tenancy Act*. However, since the landlord has been successful with the claim before me, the landlord is entitled to recovery of the \$50.00 filing fee for the cost of this application.

I order that the landlord keep the security deposit in the amount of \$900.00 and I grant a monetary order in favour of the landlord for the difference in the amount of \$4,550.00.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed without leave to reapply as withdrawn by the landlord.

I hereby order the landlord to keep the security deposit in the amount of \$900.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,550.00.

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: August 01, 2012.

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Residential Tenancy Branch