



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNDC FF  
                                CNR FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, 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 Landlord for this application.

The Tenants filed seeking an Order to cancel a Notice to end tenancy for unpaid rent and to recover the cost of the filing fee from the Landlord for their application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. 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. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be awarded a Monetary Order?
3. Should the Tenants be granted an Order to cancel the 10 Day Notice?

### Background and Evidence

The parties entered into a fixed term tenancy agreement that began on July 1, 2012 and is set to end on June 30, 2013. Rent is payable on the first of each month in the

amount of \$1,300.00. On June 10, 2012 the Tenants paid \$650.00 as the security deposit and on June 30, 2012 \$650.00 was paid as the pet deposit.

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement and addendum; the move in condition inspection report form; two 10 Day Notices for unpaid rent; and receipts for parts and labour to repair a faucet and light switch.

The Landlord submitted that the Tenants have made only two payments towards rent: August 7 they paid \$650.00 and on September 1, 2012 they paid \$1,300.00. The current accumulate balance of unpaid rent is \$1,950.00 (3 months x \$1,300.00= \$3,900.00 – \$1,950.00 = \$1,950.00). A 10 Day Notice was personally served to Tenant J.L. from the Landlord on August 16, 2012.

The Landlord filed seeking an Order of Possession and a Monetary Order for the following:

- \$1,950.00 unpaid rent up to September 30, 2012
- \$75.00 in late payment charges (3 x \$25 for July, August & September)
- \$137.29 for repairs to the faucet and light switch on August 8, 2012 (\$90.00 labour + \$47.29 parts)
- \$730.24 for future anticipated costs for advertising to re-rent the unit
- \$433.33 for ten days rent for October 2012 in case the Landlord is not able to re-rent the unit right away
- \$31.44 for the costs of registered mail packages to serve the hearing documents and the Landlord's evidence.

The Landlord was not able to provide testimony as to why the faucet and light switch needed to be repaired. He confirmed the duplex is approximately 36 years old and that he has owned it for just over one year.

The Tenants confirmed receipt of the 10 Day Notice and they confirmed they owe \$1,950.00 in outstanding rent. They argued that they entered into a verbal agreement with the Landlord to use their security and pet deposits towards rent which would only leave a balance owing of \$650.00.

The Tenants dispute the Landlord's claim for costs of repairs as the repairs were required due to normal wear and tear as they simply turned on the tap and it did not turn off. Also the light switch just broke from normal wear and age. They submitted that the

Landlord repaired the items and made no mention that they would have to pay for them at that time.

The Landlord denied entering into a verbal agreement to use the deposits towards rent. He confirmed he wished to proceed with his application for the Order of Possession and monetary order.

### Analysis

**Order of Possession** – When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice and prove why the Notice should be cancelled in accordance with the Act.

In this case the Tenants made partial payments on August 7, 2012 and September 1, 2012, leaving a balance due of \$1,950.00, after the five day time period. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, **August 26, 2012**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claimed accumulated unpaid rent of \$1,950.00 that was due September 1, 2012, in accordance with section 26 of the Act which stipulates that rent must be paid in accordance with the tenancy agreement.

I find the \$1,300.00 which was paid September 1, 2012 covered use and occupancy for the month of September 2012 as the tenancy ended August 26, 2012; leaving an unpaid balance of rent for July and August of \$1,950.00 as \$650.00 was paid August 7, 2012. Accordingly, I award the Landlord a Monetary Order in the amount of **\$1,950.00**.

**Late Payment Fees.** The evidence supports that the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00 when rent is not paid on the first of each month, in accordance with section 7 of the Residential Tenancy Regulation.

The Landlord has applied for late payment fees for July, August and September, 2012 however this tenancy ended August 26, 2012, in accordance with the 10 Day Notice. The tenancy agreement is no longer in effect after the tenancy ends therefore the Landlord is not entitled to late payment charges for occupancy after August 26, 2012. Accordingly I award the Landlord late payment charges for July and August 2012 in the

amount of **\$50.00** and I dismiss his claim for September late payment charge, without leave to reapply.

**Repair Costs.** The Landlord is seeking to recover \$137.29 to repair a faucet and light switch. The Tenants disputed this claim arguing that the repairs were required for normal wear and tear.

Section 32(1) of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant.

Section 32(4) of the Act states a tenant is not required to make repairs for reasonable wear and tear.

Based on the aforementioned, and in the absence of evidence to prove otherwise, I find given the age of the rental unit the repairs were required due to normal wear and tear. Accordingly I dismiss the Landlord's claim, without leave to reapply.

**Anticipated Losses.** The Landlord has filed seeking \$730.24 for anticipated advertising costs and \$433.33 for anticipated loss of October rent. The Landlord has not suffered these losses as of yet, therefore I find his application to be premature and I dismiss his claim for advertising and loss of October rent, with leave to reapply.

**Registered Mail.** In regards to registered mail fees for bringing this application forward, I find that the Landlord has chosen to incur these costs that cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Costs incurred due to a service method choice are not a breach of the Act. Therefore, I find that the Landlord may not claim mail costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*, and the claim of \$31.44 is dismissed, without leave to reapply.

The Landlord has succeeded with their 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 Tenants' security deposit plus interest as follows:

Unpaid Rent	\$1,950.00
Late payment fee	50.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,050.00</b>

<b>LESS:</b> Security Deposit \$650.00 + Interest 0.00	-650.00
Pet Deposit \$650.00 + Interest 0.00	<u>-650.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>(\$ 750.00)</u></b>

As per the aforementioned the Notice to end tenancy has been upheld and the tenancy has been cancelled. Accordingly, I dismiss the Tenants' claim to cancel the 10 Day Notice, without leave to reapply.

The Tenants have not been successful with their application; therefore, they must bear the burden of the cost to file their application.

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlord has been granted a Monetary Order for **\$750.00**. This Order is legally binding and must be served upon the Tenants.

The Tenants' application, is HEREBY DISMISSED, without leave to reapply.

k

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: September 21, 2012.

---

Residential Tenancy Branch