



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MND, MNDC, MNSD, FF, O

### 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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 tenants for the cost of this application.

An agent for the landlord company and one of the tenants attended the conference call hearing and both provided affirmed testimony. The other named tenant did not attend. The landlord's agent provided evidence that the tenants were both served separately with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on June 28, 2012, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

The parties were given the opportunity to cross examine each other on the evidence and testimony, all of which has been reviewed and is considered in this Decision.

At the outset of the hearing, the landlord's agent advised that both tenants have moved out of the rental unit, and therefore the application for an Order of Possession is withdrawn.

### Issue(s) to be Decided

- 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- 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 March 15, 2012 and was to expire on April 30, 2013, however the tenants moved out of the rental unit in June, 2012. Rent in the amount of \$2,000.00 per month was 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 tenants in the amount of \$1,000.00 as well as a key fob deposit of \$150.00, and both of those deposits are still held in trust by the landlord. The rental unit is a condominium style apartment governed by a strata council and a written tenancy agreement with 2 addendums was provided for this hearing.

The landlord's agent testified that the tenants abandoned the rental unit, however copies of several emails exchanged between the parties indicate that the landlord's agents were notified of their intention to move out.

The landlord's agent had arranged a move-out condition inspection with one of the tenants, which was to take place on June 21, 2012. The landlord's agent attended but neither tenant showed up. The tenant who the inspection was arranged with told the landlord's agent she was in Whistler and would arrive soon, but was actually in Ontario at that time and no one attended on behalf of the tenants. A move-in condition inspection had been completed by the parties and a copy of that report was provided for this hearing, but a move-out condition inspection was not completed by the landlord or the tenants. When asked about providing a second opportunity to conduct the move-out condition inspection report, the landlord's agent replied that it was spoken about during a telephone conversation but a Notice of Final Opportunity to Schedule a Condition Inspection was not provided to the tenants.

The tenants moved out of the rental unit without paying rent for the month of June, 2012. The tenants had given a cheque for the rent to the landlord, but it was returned for non-sufficient funds by the financial institution and the landlord provided a copy of that cheque with evidence that the financial institution charged the landlord \$7.00 for the returned item. The landlord claims \$2,000.00 for June's rent, \$7.00 for the returned cheque fee and \$1,000.00 for loss of revenue for the month of July, 2012. The rental unit was re-rented for July 15, 2012. The landlord was required to have the painting finished, the rental unit cleaned and carpets cleaned before re-renting.

The landlord's agent further testified that one of the tenants had placed a large decorative poster on the wall of the bedroom which left about 100 pin holes in the wall. Also, the den contained scrapes on the walls and the other bedroom was left with a large shelf attached that belonged to the tenants and the removal of that shelf left large

holes in the walls of that bedroom. The rental unit had been painted just before the tenancy began, which is not disputed by the tenant, and the rental unit required re-painting after the tenants moved out. The landlord provided a copy of a receipt for painting in the amount of \$448.00.

The tenants also left items in the rental unit after departing, and failed to complete cleaning and carpet cleaning. The landlord provided a copy of a receipt in the amount of \$275.52 which was paid for that service. The document entitled "Addendum B to Lease Agreement" is dated March 13, 2012, is signed by both tenants and states that carpets must be cleaned at the end of the tenancy.

One of the tenants returned a key fob but the other tenant moved to Ontario without returning a fob or keys for the mail box and rental unit. The landlord was required to change the locks before a new tenant moved in and provided a receipt in the amount of \$125.54. The landlord also claims \$75.00 for one key fob replacement.

The landlord also provided a copy of one page of the strata by-laws which states that moving into or out of the building requires a fee in the amount of \$150.00 payable by the landlord, and that if a move takes place within a year from the last move, the fee is \$300.00. The landlord claims \$150.00 of that fee from the tenants for their early departure.

The landlord also claims filing fees in the amount of \$50.00 and the cost of registered mail in the amount of \$21.37.

The tenant testified that she moved out of the rental unit on June 16, 2012 and the tenant who moved to Ontario moved out of this rental unit on or about June 26, 2012. The rent was paid by the tenant who moved to Ontario, and was given money to pay the rent but failed to do so even though she was paid every month. The tenant feels that the other tenant should be responsible for the costs claimed by the landlord.

### Analysis

Because both tenants signed the tenancy agreement, they are jointly and severally responsible for costs associated with the tenancy.

I accept that the parties entered into a fixed term tenancy for a tenancy to end on April 30, 2013, and that the landlord received an N.S.F. cheque for rent for the month of June, 2012. I also accept that the landlord was required to pay a fee of \$7.00 for that returned cheque, and therefore the landlord is entitled to a monetary order in the amount of \$2,007.00. I am further satisfied that the landlord was not able to re-rent the rental unit prior to July 15, 2012, and the landlord is entitled to a monetary order in the amount of \$1,000.00 for the first half of July, 2012.

The *Residential Tenancy Act* states that if a landlord fails to complete a move-out condition inspection report, or fails to provide the tenants with at least two opportunities to conduct the inspection, the landlord's right to claim against the security deposit for damages is extinguished. However, because the landlord is owed rent money, I find that the landlord's right to claim against the security deposit for unpaid rent is not extinguished. Therefore, I must order the landlord to keep the security deposit in partial satisfaction of the claim.

The tenant did not dispute that the rental unit was freshly painted prior to moving into the rental unit and that the rental unit required painting again at the end of the tenancy, and I find that the landlord has proven a claim in the amount of \$448.00 for painting.

I further find that the tenants are liable for the cost of \$275.52 for carpet cleaning and cleaning the rental unit. Some items were left behind, and the Addendum to the tenancy agreement specifies the tenants' obligations regarding the carpet cleaning.

I also find that the landlord has provided sufficient evidence of the cost for new locks for the rental unit because of keys that were not returned by the tenant who moved to Ontario. That cost in the amount of \$125.54 and \$75.00 for the key fob should be awarded to the landlord, less the \$150.00 deposit paid by the tenants at the outset of the tenancy, for a total of \$50.54.

I also find that the landlord has made out a claim for moving from the rental unit within 1 year as specified in the tenancy agreement, and the landlord is entitled to recovery of the \$150.00 fee charged by the strata.

The *Residential Tenancy Act* does not permit me to order recovery of registered mail costs, but does allow for recovery for the filing fee. Since the landlord has been at least partially successful with the application, the landlord is entitled to recovery of the \$50.00 filing fee for the cost of filing this application.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is dismissed as withdrawn.

I hereby order the landlord to keep the \$1,000.00 security deposit and I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the difference in the amount of \$2,981.06.

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: September 05, 2012.

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Residential Tenancy Branch