



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, 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 an Order of Possession for breach of an agreement, 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 tenants for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. Neither of the tenants appeared and the landlord testified that a security officer served the Landlord's Application for Dispute Resolution and notice of hearing personally on one of the tenants on September 20, 2012 and the landlord provided a copy of the notice of hearing which is endorsed by the server and signed as an acknowledgement of service by the tenant, T.J.F. I am satisfied that that tenant has been served in accordance with the *Residential Tenancy Act*. The other tenant, S.M.H. has not been served, and I dismiss the landlord's application with respect to that tenant.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord testified that the tenants moved out of the rental unit on either October 2 or 3, 2012 and therefore the landlord's applications for Orders of Possession are withdrawn.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Is the landlord entitled to an order permitting the landlord 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 month-to-month tenancy began on September 1, 2012 and a tenancy agreement, a copy of which was provided for this hearing was signed by the landlord on September 1, 2012 and by one of the tenants, T.J.F. on September 2, 2012. Rent in the amount of \$860.00 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 from the tenants a security deposit in the amount of \$430.00 as well as the first month's rent in the amount of \$860.00 by way of a single cheque in the amount of \$1,290.00. The cheque was returned by the tenants' financial institution marked "Insufficient Funds" and the landlord provided a copy of that N.S.F. cheque for this hearing. The cheque is dated September 1, 2012 in the amount of \$1,290.00 and is accompanied by a return advice from the bank. According to the advice, no processing fee was charged to the landlord, although the landlord's application requests a monetary order to include a \$20.00 N.S.F. fee.

The landlord further testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy was provided for this hearing. The landlord changed the title of the document to read, "5 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord testified that upon speaking to an information officer with the Residential Tenancy Branch, the landlord learned that a 10 day wait to apply for an Order of Possession was still necessary. The notice is dated September 7, 2012 and contains an expected date of vacancy of September 12, 2012 and states that the tenants failed to pay rent in the amount of \$1,290.00 that was due on September 1, 2012. The landlord further testified that the tenants moved out of the rental unit on either October 2 or 3, 2012.

The landlord has not re-rented the rental unit stating that the unit requires extensive cleaning and repairs.

The landlord claims \$1,290.00 for the N.S.F. cheque, in addition to the \$20.00 N.S.F. fee, \$860.00 for unpaid rent for the month of September, 2012 and a daily rate for the tenants over-holding of the rental unit, although the landlord's application requests that the monetary order include loss of revenue for the month of October, 2012.

### Analysis

Firstly, I accept the evidence and testimony of the landlord with respect to the returned cheque. I find that the landlord has established a claim for unpaid rent for the month of September, 2012 in the amount of \$860.00.

I further accept that the tenants did not vacate the rental unit in accordance with the notice to end tenancy issued by the landlord but vacated the rental unit on October 2 or October 3, 2012. The landlord was not able to state what date the tenants actually left, and I find that the landlord has established a claim for 2 days of over-holding, or \$55.48.

With respect to the landlord's request for recovery of a \$20.00 fee for the returned cheque, the *Residential Tenancy Act* states that a landlord may claim any fee charged by the financial institution and \$25.00 for late payments or returned cheques but only if it is contained in the tenancy agreement. I have reviewed the tenancy agreement and find that it is silent with respect to charges for returned cheques or late rent payments. I have also reviewed the returned cheque advice which shows that the landlord has not been charged a fee by the financial institution, and therefore, the landlord's application for a \$20.00 fee is hereby dismissed.

Although the tenant wrote a cheque for the amount of \$1,290.00, that payment was intended to be for the first month's rent and the security deposit. A security deposit is not the landlord's money but is held in trust by the landlord for return to the tenant at the end of the tenancy. Therefore, I find that the landlord is not entitled to the security deposit portion of that cheque.

With respect to loss of revenue for the month of October, 2012, the landlord testified that the rental unit has not been advertised for rent because it requires extensive cleaning and repairs. The landlord has not provided any evidence of that or any evidence of advertising the rental unit for rent again. In order to be successful in a claim for loss of revenue, the landlord must prove that the landlord did whatever was reasonable to mitigate, or reduce the loss suffered. The landlord has not provided any such evidence and the landlord's application for loss of revenue is hereby dismissed.

In summary, I find that the landlord has established a claim in the amount of \$860.00 for September's rent and \$55.48 for over-holding of the rental unit for 2 days in October, 2012. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for unpaid rent or utilities, and the landlord's application for an Order of Possession for breach of an agreement are both dismissed without leave to reapply.

The landlord's application for a monetary order as against tenant, S.M.H. is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlord as against the tenant, T.J.F. pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$965.48.

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: October 24, 2012.

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Residential Tenancy Branch