



# 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 the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on October 16, 2012 the tenant did not attend. The landlord's agent gave affirmed testimony that the documents were sent on that date and in that manner and verbally provided a tracking number assigned by Canada Post, and I am satisfied that the tenant was served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes and the only participant who joined the conference call hearing was the landlord's agent.

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

At the outset of the hearing, the landlord stated that the tenant has vacated the rental unit and the landlord's application for an Order of Possession is withdrawn.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- 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

The landlord's agent testified that this tenancy began as a fixed term tenancy commencing on November 1, 2006 and expiring on April 30, 2007. The tenancy then reverted to a month-to-month tenancy. Rent in the amount of \$830.00 per month was originally payable under the tenancy agreement, a copy of which was provided for this hearing, and was increased to \$850.00 effective November 1, 2007 and again to \$880.00 effective March 1, 2012. Copies of the rent increase notices have also been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$415.00 and no pet damage deposit was collected.

The landlord's agent further testified that the tenant paid rent by way of direct deposit to the landlord's bank, however, the payment for October, 2012 was not made. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 4, 2012 with an effective date of vacancy of October 14, 2012. The landlord's agent testified that the notice was served by posting it to the door of the rental unit. A copy of the notice and a copy of a Proof of Service signed by the landlord's agent and a witness were also provided for this hearing.

The landlord claims unpaid rent in the amount of \$880.00 for the month of October, 2012 as well as \$25.00 for a late fee and \$25.00 for an N.S.F. fee, which are both included on the tenancy agreement. The landlord also claims loss of revenue for the month of November, 2012 because the tenant left the rental unit without providing any notice to the landlord. The landlord's agent testified that the head office for the company and the manager both advertised the rental unit on Craigslist and Kijiji, both on-line advertising websites, as well as on the landlord's own website right away, but provided no evidence of such advertisements. The rental unit has recently been re-rented for December 1, 2012.

The tenant has not provided the landlord with a forwarding address.

### Analysis

I accept the oral testimony of the landlord's agent that the tenant failed to pay rent in the amount of \$880.00 that was due on October 1, 2012. I further accept that the tenancy agreement provides for a late fee and an N.S.F. fee of \$25.00 each, however, the regulations to the *Residential Tenancy Act* state that a landlord may charge a service fee charged by a financial institution to the landlord for the return of a tenant's cheque and an administration fee of not more than \$25.00 for the return of a tenant's cheque by

a financial institution if those fees are set out in the tenancy agreement. I therefore find that the landlord has established a claim in the amount of \$25.00 for the late fee.

The Act also requires a party who makes a claim against another party to do whatever is reasonable to mitigate or reduce the damage or loss suffered. The landlord's agent testified that the head office advertised the rental unit, but no evidence of that has been provided, and therefore, the landlord's claim for loss of revenue for the month of November, 2012 cannot succeed.

In summary, I find that the landlord has established a claim as against the tenant in the amount of \$905.00. The landlord currently holds a security deposit in the amount of \$415.00, and I find that the tenant is entitled to interest on that money in the amount of \$12.91, and I find that the landlord is entitled to keep the security deposit and interest in partial satisfaction of the claim. 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 is hereby dismissed as withdrawn.

I hereby order the landlord to keep the security deposit in the amount of \$415.00, plus interest in the amount of \$12.91 in partial satisfaction of the claim, and I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$527.09.

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: November 27, 2012.

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Residential Tenancy Branch