



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MND MNR MNSD FF  
                                 MT CNR RR

### Introduction

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

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for: damage to the unit site or property, for unpaid rent or utilities, to keep the security and or pet deposit, and to recover the cost of the filing fee from the Landlord for this application.

The Tenant filed seeking more time to apply to have a notice to end tenancy cancelled; to cancel a notice to end tenancy for unpaid rent, and for an order to allow the Tenant to reduce rent for services or facilities agreed upon but not provided.

The Landlord affirmed that he personally served the Tenant with their application for dispute resolution and notice of hearing documents on November 16, 2012 at the rental unit. Subsequent to being served Notice of this proceeding the Tenant filed her application for dispute resolution on November 23, 2012 which was scheduled to be heard at the same time as the Landlord's claim. Based on the forgoing I find the Tenant was sufficiently served notice of this proceeding and I continued in her absence.

### Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be issued a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

### Background and Evidence

The Landlord submitted 35 pages of documentary evidence which included, among other things, copies of: the tenancy agreement; a 10 Day Notice to end tenancy issued November 5, 2012; move in condition inspection report form; witness statements; an invoice; and a copy of the tenant ledger.

The Tenant submitted documentary evidence which included, among other things, copies of: the 10 Day Notice; a proof of service document for the 10 Day Notice; and the tenancy agreement.

The parties entered into a month to month tenancy that began on August 1, 2011 for the monthly rent of \$650.00. Rent was increased as of August 1, 2012 and is payable on the first of each month in the amount of \$677.00. On July 25, 2011 the Tenant paid \$325.00 as the security deposit and on July 28, 2011 the parties attended the move in condition inspection and signed the report form indicating the required repairs.

The Landlord advised that that he was told the Tenant vacated the property on December 4, 2012. He attended the unit that day and found the rental unit unlocked and the keys were left on the fridge. He confirmed they have regained possession; therefore, they were withdrawing their request for an Order of Possession.

The Landlord stated that when the Tenant failed to pay the November 1, 2012 rent they issued her a 10 Day Notice and personally served it to an adult who was at the rental unit on November 5, 2012. The 10 Day Notice includes \$677.00 for November rent, a \$25.00 late payment fee, and \$512.59 for the cost to replace the Tenant's toilet.

The Landlord argued that the Tenant should be responsible to pay for the replacement toilet of \$237.91 plus \$274.68 in labour plus HST for the removal and installation of the toilet. The building was built in 1970 and while this was an older toilet the Landlord could not say how old it was. He did confirm that these older toilets are usually repaired by replacing the interior parts as long as the porcelain is not cracked. He noted that this toilet was functioning fine during the first year of the tenancy and it was not until after they removed the toilet and broke it open that they found a toothbrush lodged inside.

### Analysis

#### **Landlord's application**

Upon consideration of the evidence before me, in the absence of testimony from the Tenant who did not appear, despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their documentary evidence.

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 or the tenancy ends.

In this case the Tenant received the 10 Day Notice on November 5, 2012 and continued to occupy the unit until December 4, 2012, without paying the past due rent. The Landlord regained possession of the unit and withdrew his request for an Order of Possession.

The Landlord seeks a Monetary Order for the unpaid November 1, 2012 rent of \$677.00, in accordance with section 26 of the Act that stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement. Accordingly, I find the

Landlord has met the burden of proof and I award them a monetary order for unpaid rent of **\$677.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

Upon review of the Landlord's evidence I find their claim of \$512.59 (\$237.91 parts + 6.5 hours labour at \$274.68) to be excessive for replacement of a toilet that has surpassed its useful life of 20 years. I find it has surpassed its useful life as it was located in a forty two year old building and the Landlord did not know the age of the toilet but referred to it as being an old toilet.

*Residential Tenancy Policy Guideline #16* states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Landlord is entitled to nominal damages for the replacement of the toilet in the amount of **\$130.00**.

The Landlord has primarily been successful 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 Tenant's security deposit plus interest as follows:

Unpaid Rent for November 2012	\$ 677.00
Replacement of Toilet	130.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$857.00</b>
<b>LESS: Security Deposit \$325.00 + Interest 0.00</b>	<u>-325.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 532.00</u></b>

### **Tenant's application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

While the Landlord attended the hearing by way of conference call, the Tenant did not.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Tenant called into the hearing during this time. Accordingly, in the absence of oral submissions from the Tenant I order her application dismissed without liberty to reapply.

#### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$532.00**. This Order is legally binding and must be served upon the Tenant.

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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: December 18, 2012.

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Residential Tenancy Branch