



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPR, OPB, MND, MNR, MNSD, MNDC, FF  
Tenant: MT, CNR, RPP, AAT

### **Introduction**

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and an order to allow her to retrieve her possessions.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

The parties testified that the tenant vacated the rental unit as of November 27, 2012 and is living elsewhere but that her possessions are still in the rental unit. As such, the parties agree the landlord has taken possession of the unit back and there is no need for the landlord to obtain an order of possession or for the tenant to dispute the notice to end tenancy. As such, I amend both Applications to exclude the matter of possession.

### **Issue(s) to be Decided**

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to an order to have the landlord return her possessions and allowing her access to the unit, pursuant to Sections 30 of the *Residential Tenancy Act (Act)*.

### **Background and Evidence**

The parties agree the tenancy began in June 006 as a month to month tenancy for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid.

The landlord seeks compensation in the amount of \$2,000.00 for unpaid rent for the months of November and December 2012. The landlord includes December 2012 despite the tenant vacating the property on November 27, 2012 because the tenant's belongings are still in the rental unit.

The landlord testified the tenant had been told that she could go to the rental unit to pick up her belongings anytime as long as she had called the landlord to arrange to advise the agent of when she would be there.

On one occasion the tenant attempted to retrieve possessions but police were called and the tenant was told by police to not attend the property again. The landlord has changed the lock to the front door but states the tenant still has access through other doors to the unit. The tenant asserts she does not have any keys that would allow her access to the rental unit.

The landlord seeks compensation for damage to the rental unit in the amount of \$8,000.00. The landlord has submitted several photographs of the current condition of the rental unit and testified that she had removed a substantial amount of debris from the basement belonging to another tenant and garbage from the main floor.

The landlord has seeks compensation as they have rented a truck to remove the items already removed; for drywall repairs; sealing of sub floors due to pet urine; painting of ceilings, walls, fireplaces, and kitchen cabinets; and replacement of all carpets. The landlord testified the unit was freshly painted and new carpets had been installed in 2006 just prior to the start of this tenancy.

### Analysis

Based on the testimony of both parties I grant the tenant access to the rental unit on December 19, 20, and 21, 2012 between the hours of 9:00 a.m. to 6:00 p.m. for the sole purpose of obtaining and removing her possessions.

In conjunction with this I also order the landlord to be present to open the door to the rental unit at the start of the access period and to lock it at the end of the access period each day.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As the tenant did not dispute the landlord was entitled to rent for the months of November and December 2012, I find the landlord is entitled to this rent in the amount of \$2,000.00.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

While I accept that the rental unit at the current time, from the photographic evidence, has and will require additional substantial cleaning due to the tenant's non-compliance with Section 37, I find the landlord has failed to provide any evidence to establish what the value of that cleaning will be.

In relation to the landlord's claim for replacement carpets, the landlord again has provided no evidence to establish the value of this replacement. In addition the landlord has failed to provide any evidence of the condition of the carpet either at the start of or the end of the tenancy. None of the photographic evidence shows any damage to carpets. Therefore, I find the landlord has failed to establish these replacements are required as a result of the tenancy.

As to the drywall repairs the landlord has provided no evidence what drywall repairs are required. In relation to the painting of ceilings, walls, fireplaces and kitchen cabinets the landlord has failed to provide any evidence to establish the condition of the rental unit at the start of the tenancy. As such, for these items, I find the landlord has failed to establish any damage occurred as a result of the tenancy.

Based on the evidence provided by the landlord I accept that there is a substantial pet urine problem that resulted from the tenancy and will require that all of the sub floors be sealed. I accept the landlord has established the value of this work to be \$400.00.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,450.00** comprised of \$2,000.00 rent owed; \$400.00 repairs and \$50.00 of the \$100.00 fee paid by the landlord for this application, as he was only partially successful in his claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$516.64 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,933.36**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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