



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, RP, OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy; requested compensation for emergency repairs; and, repair orders. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; as well as, authorization to retain the security deposit.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant advised at the commencement of the hearing that she is in the process of moving out and did not have an objection to returning possession to the landlord in the next two days. As the tenant is moving out I found it unnecessary to further consider the tenant's request to cancel the Notice to End Tenancy or issue any repair orders.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the tenant entitled to compensation for replacing the lock?
3. Is the landlord entitled to compensation for unpaid rent, and if so, the amount?
4. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

I was provided undisputed testimony as follows:

- There is no written tenancy agreement;
- The tenancy commenced in April 2012;
- The tenant paid a security deposit of \$325.00
- The tenant was required to pay rent of \$650.00 on the 1<sup>st</sup> day of every month.

The landlord filed to recover unpaid rent of \$2,650.00 for the months of September 2012 through December 2012. The tenant acknowledged that that she has not paid rent for

the months of November 2012 or December 2012 but stated that she did pay rent for months prior to November 2012.

The landlord stated the tenant paid rent in cash and that he did not issue receipts in the last several months.

The tenant provided a copy of the first page of the older version of the four-page Notice to End Tenancy. The first page does not indicate the amount of outstanding rent. The tenant submitted that the landlord had given the one page to her seven year old son.

The landlord did not provide any documentary evidence in support of his claim. The landlord submitted that he gave the tenant's son, in the presence of the tenant, two pages of a Notice to End Tenancy. The landlord did not provide a copy of the pages he allegedly served upon the tenant or her son as evidence for this proceeding.

The landlord requested that his monetary claim be amended to include loss of rent for January 2013. I did not consider the amendment as the landlord's loss for January 2013 is not yet known. The parties were informed that the landlord is at liberty to file a subsequent Application for Dispute Resolution seeking loss of rent for January 2013 once the amount of the loss has been determined.

The tenant requested recovery of \$63.00 as the cost to replace the lock for the rental unit. The tenant did not submit a receipt for the replacement lock and stated the receipt is somewhere in her packed moving boxes.

The tenant requested her application be amended to deal with disconnection of satellite dish. I did not consider this request as the landlord had not been put on notice of such a dispute. The parties were informed that the tenant may make a subsequent Application for Dispute Resolution to deal with that issue.

### Analysis

Since the tenant is moving out and was agreeable to returning vacant possession to the landlord within the next two days I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Where one party requests compensation from the other party, the party making the claim bears the burden of proof. I was provided only disputed verbal testimony as to whether rent for September 2012 and October 2012 was fully paid. In the absence of receipts for cash payments or the second page of the Notice to End Tenancy issued to

the tenant in November 2012 I find the landlord has failed to meet his burden of proof. Therefore, I dismiss the claims for unpaid rent September 2012 and October 2012 and I grant the landlord's claim for unpaid rent for the months of November and December 2012 based upon the tenant's acknowledgement that she did not pay rent for those months.

The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the unpaid rent. The landlord is provided a Monetary Order to serve upon the tenant, calculated as follows:

Unpaid rent – November and December 2012	\$ 1,300.00
Less: security deposit	<u>(325.00)</u>
Monetary Order	\$ 975.00

I dismiss the tenant's request for compensation for emergency repairs in the absence of any documentary evidence that she incurred a loss for the amount claimed.

I make no award for recovery of the filing fee paid by either party.

### Conclusion

The landlord is provided an Order of Possession for unpaid rent pursuant to the tenant's agreement. The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$975.00 to serve upon the tenant and enforce as necessary. The tenant's monetary claim has been dismissed.

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: January 03, 2013.

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Residential Tenancy Branch

