



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This was a hearing with respect to the landlord's application for an order for possession and a monetary order. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing. The tenant was assisted by his brother who acted as his lawyer at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to an order for possession?

### Background and Evidence

The rental unit is a suite in the landlord's house in Richmond. There is no written tenancy agreement and neither party could say with any certainty when the tenancy started. According to the tenant the tenancy likely began in or about May, 2009. The landlord said that the tenant paid a security deposit equal to a half month's rent, but provided no record of such a payment. The landlord said the rent is \$750.00 per month plus a \$50.00 monthly charge for storing a boat and trailer on the property. The landlord said the tenant is also responsible for paying 20% of the utilities. The landlord said that the tenant has not paid rent since May. She said that he paid \$600.00 for May and since then has paid only \$500.00 in July and another \$500.00 in November. The landlord claimed that the tenant owes \$4,800.00 for rent and a further \$1,078 for gas and \$497.30 for Hydro utilities. The landlord has not kept any record of payments and has not issued receipts for cash payments received from the tenant, contrary to section 26 (2) of the *Residential Tenancy Act*.

The landlord said that the tenant was served with a 10 day Notice to End Tenancy for unpaid rent on December 1, 2012 and he moved out on December 7<sup>th</sup> pursuant to the Notice. I was not given a copy of the Notice to End Tenancy as evidence on this hearing. The landlord said that she received advice from the Residential Tenancy Office that she could seize the possessions that the tenant left at the rental property and

keep them for 60 days until he paid the rent that he owes. She has prevented the tenant from removing the boat and trailer from the property and she has also prevented the tenant from removing a shed and contents that the tenant placed on the rental property and has apparently used to store tools.

The tenant denied that he moved out pursuant to a 10 day Notice to End Tenancy. He said that he was forced to leave by reason of intimidation and threats by the landlord's husband and her three sons. He said that the landlord has prevented him from removing his possessions, including a boat and trailer that belongs to his uncle and a shed and contents that contains his tools. The tenant said that the landlord has strategically parked motor vehicles to block him from towing away the boat and trailer and she has refused to allow him to come onto the property to dismantle the shed and remove the shed and contents. The tenant disputed the landlord's testimony with respect to rent that is due. He has not kept any records of payments made to the landlord and did not submit any documents or bank records relating to alleged rent payments. The tenant testified that he paid a \$375.00 security deposit and a \$375.00 pet deposit at the beginning of the tenancy. He did not submit any documents to support his position. The tenant acknowledged that he has not paid rent since August. He said that he paid \$100.00 in August and nothing afterwards. The tenant testified that he has not paid amounts for utilities, but the landlord has never provided him with a copy of any utility bill with a request for payment. The landlord did not submit any copies of utility bills as part of her evidence on this application. Although the tenant kept no records and could not say when he made payments to the landlord, he said he was sure about the balance owing because he was acutely conscious of what he owed.

### Analysis and Conclusion

Section 26 (3) of the *Residential Tenancy Act* provides that whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant, or prevent or interfere with the tenant's access to the tenant's personal property.

During the hearing I advised the landlord that she had no basis to deny the tenant access to retrieve his property. The landlord said she would permit the tenant to recover his property. If the landlord does not grant him access the tenant said that he would file an application for dispute resolution. Because the tenancy has ended and in the absence of a copy of a current Notice to End Tenancy there is no basis for the granting of an order for possession. The landlord's application for an order for possession is therefore dismissed.

In her application for dispute resolution the landlord requested a monetary order in the amount of \$5,871.60. At the hearing she claimed amounts totalling \$6,375.30. The landlord did not submit any ledgers, accounting records or receipt books to support her claim for unpaid rent. She acknowledged at the hearing that when the tenant paid rent he paid it in cash and the landlord did not give him receipts for such payments. In the absence of any records that a competent, businesslike landlord would be expected to maintain, I accept the tenant's testimony that he paid rent until August. Upon the tenant's evidence there is \$700.00 outstanding for August and there is \$2,400.00 due for September, October and November. Because, on the evidence, the tenant was improperly evicted on December 7<sup>th</sup>, I decline to allow a claim for rent for December. With respect to the landlord's claim for payment of utilities, I find that the landlord's claim for unpaid utilities is premature because the landlord has not delivered copies of the utility bill to the tenant with a written request for payment of a specified percentage of the bills. The landlord's claim for payment of utilities is dismissed with leave to reapply. The monetary amount awarded to the landlord is the sum of \$3,100.00. Based on the testimony of the parties I accept the tenant's evidence concerning payment of a pet and security deposit; I find that the tenant paid a \$375.00 security deposit and a \$375.00 pet deposit at the start of the tenancy. Pursuant to section 72 of the *Residential Tenancy Act* I set off the deposits of \$750.00 against the award in favour of the landlord, leaving a balance of \$2,350.00 due to the landlord. The landlord has been partially successful on this application; I award \$50.00 of the \$100.00 filing fee for a total award of \$2,400.00 and I grant the landlord an order under section 67 in the said amount. This order may be registered in the Small Claims Court and 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: January 14, 2013

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Residential Tenancy Branch

