



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent, cleaning, re-keying, and other losses. The tenant did not appear at the hearing. The landlord provided a registered mail receipt as proof the hearing documents were sent to the tenant at the rental unit on April 17, 2013. The landlord confirmed that the tenant was residing at the rental unit until the end of April 2013. I was satisfied the tenant was sufficiently served with notice of this proceeding and I continued to hear from the landlord without the tenant present.

As the landlord confirmed that she has regained possession of the rental unit I determined that an Order of Possession was no longer required and I do not provide one with this decision.

### Issue(s) to be Decided

1. Is the landlord entitled to compensation for unpaid rent, loss of rent, cleaning, re-keying and other amounts claimed?
2. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The one year fixed term tenancy commenced July 15, 2012 and the tenant paid a \$500.00 security deposit. The tenant was required to pay rent of \$1,000.00 on the 15<sup>th</sup> day of every month. The tenant failed to pay rent for the months of February and March and on April 5, 2013 the landlord sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent via registered mail. The 10 Day Notice indicated that rent of \$2,000.00 was outstanding along with \$800.00 in utilities.

In filing this application on April 16, 2013 the landlord requested compensation for:

Unpaid Rent due: Feb 15; March 15; and, April 15, 2013	\$ 3,000.00
Loss of rent payable: May 15; June 15; and, July 15, 2013	3,000.00
Utilities	1,000.00
Cleaning	100.00
Re-keying	188.00
Registered mail	<u>50.00</u>
Total claim	\$ 7,338.00

On April 17, 2013 the parties entered into an agreement that the tenant would pay the landlord \$1,500.00 for the “back rent” by way of a cheque dated April 19, 2013 and the tenant would move out by April 30, 2013. The April 19, 2013 cheque was returned for insufficient funds.

The tenants rent cheque dated April 15, 2013 was also returned for insufficient funds. The landlord testified; however, that the tenant did deposit \$500.00 in the landlord’s bank account in April 2013.

I noted that the tenancy agreement indicates that utilities are included in rent. The landlord pointed to section 10 of the tenancy agreement that indicates the landlord agreed to include utilities in the rent because the tenant was to repair and build a fence in the backyard (materials to be supplied by the landlord). The landlord testified that since the tenant did not build the fence the landlord wishes to recover utilities from the tenant.

The landlord testified that upon regaining possession of the unit the landlord found that the tenant left the unit damaged and unclean. The landlord is still in the process of remediating the damage and has not re-rented the unit.

The landlord included re-keying in her claim as she re-keyed the locks at the beginning and end of the tenancy, as she does with every tenancy. The landlord acknowledged that the tenant appears to have returned all of the keys for the unit at the end of April 2013.

### Analysis

Under the Act, a tenant is required to pay rent when due under the terms of their tenancy agreement. Based upon the evidence presented to me, I am satisfied the

tenant failed to pay rent that was due on February 15, 2013, March 15, 2013 and April 15, 2013. Therefore, I award the landlord unpaid rent of \$3,000.00 less the \$500.00 that was received in April 2013.

I find the landlord has not yet suffered a loss of rent that becomes payable on May 15, 2013; June 15, 2013 and July 15, 2013 and those losses are anticipatory as of this date. As anticipatory losses are not a basis for a monetary award, I dismiss this portion of the landlord's claim with leave to reapply.

I find the evidence presented to me does not support the landlord's claim for utilities against the tenant. Rather, I find the tenancy agreement clearly reflects the landlord's agreement to pay the tenant's utilities. Upon review of the additional comments in the tenancy agreement adjacent to section 10, I note there is not a time limit specified for building of the fence and there is no provision indicating that failure to build a fence by that time is a basis for charging the tenant for utilities. Rather, the landlord's remedy is to claim for the loss associated with the tenant's breach of the agreement. Therefore, I make no award for utilities.

I find the landlord's claim for cleaning to be pre-mature at the time of filing and especially considering the landlord is still in the process of repairing and cleaning the unit. Therefore, I dismiss this portion of the claim with leave to reapply.

The Act requires a tenant to return all keys at the end of the tenancy. I am satisfied the tenant has done so. I find the landlord does not have a basis under the Act to claim re-keying costs against the tenant and I dismiss this portion of the landlord's claim.

Registered mail costs are not recoverable under the Act and I make no award for recovery of such amounts expended by the landlord to serve documents upon the tenant.

I award the landlord \$50.00 for the filing fee given the landlord's success in this Application for Dispute Resolution. I also authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed.

In light of the above, the landlord is provided a Monetary Order in the amount calculated as follows:

Unpaid rent: February 15, 2013 – May 14, 2013	\$ 2,500.00
Filing fee	50.00
Less: security deposit	<u>(500.00)</u>
Monetary Order	\$ 2,050.00

### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,050.00 for unpaid rent. The landlord's claims for loss of rent for May 15, 2013 and onwards, and cleaning were found to be pre-mature and dismissed with leave.

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: May 14, 2013

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Residential Tenancy Branch

