



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, OPB, MNR, MNDC, FF, CNC, CNR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent, cause and breach of a material term of the tenant's Residential Tenancy Agreement pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

Tenants ALP and SW applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:50 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. Their application for dispute resolution is dismissed without leave to reapply.

The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She said that she identified a number of variations of one of the tenant's names in her application as she believed that he was operating under a number of aliases. She testified that she handed one of the tenants a 1 Month Notice on April 30, 2013. She also testified that she posted the 10 Day Notice on the tenant's door on May 2, 2013. I am satisfied that the landlord served the above Notices to the tenants in accordance with the *Act*.

The landlord testified that the tenants vacated the rental premises by June 1, 2013, although the tenants have not returned their keys to her. Since this tenancy has ended and she now has possession of the rental unit, the landlord withdrew her application for an Order of Possession. The landlord's applications to end this tenancy are withdrawn.

The landlord testified that she handed male Tenant AP (the tenant) a copy of her dispute resolution hearing package on May 14, 2013. Based on the landlord's undisputed sworn testimony, I find that the landlord has served a copy of her dispute resolution hearing package to male Tenant AP in accordance with the *Act*. I find that the landlord has not served the other tenants listed on her application for dispute resolution with a copy of her application for a monetary award and notice of this hearing in accordance with section 89 (1) of the *Act*. As such, I can only consider the landlord's application to obtain a monetary award against male Tenant AP.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant(s)?

#### Background and Evidence

This one-year fixed term tenancy commenced on October 1, 2013. Monthly rent was set at \$950.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$425.00 security deposit paid on September 29, 2012, and \$425.00 pet damage deposit paid in instalments over time and in full by January 1, 2013.

The landlord's application for a monetary award of \$1,950.00 included a request for her recovery of \$950.00 in unpaid rent for May 2013 and her loss of \$950.00 in rent for June 2013. She gave undisputed testimony that the tenants left without warning and caused extensive damage to the rental unit. She said that the repairs will take some time to complete. She testified that the tenants removed many items from the rental unit that need to be replaced. She said that she could not re-rent the premises for any portion of June 2013, due to the extensive damage arising out of this tenancy. The landlord also requested the recovery of her \$50.00 filing fee from the tenant(s).

#### Analysis

Based on the landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$950.00 for unpaid rent from May 2013.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss

that results from that failure to comply. I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the September 30, 2013 date specified in that agreement. As such, the landlord is entitled to compensation for losses she incurred for June 2013, as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for June 2013 and left without notifying the landlord or returning their keys. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the damage caused by the tenants has rendered it impractical for the landlord to be in a position whereby she could attempt to re-rent the premises for June 2013. As such, I am satisfied that the landlord has no duty under section 7(2) of the *Act* to minimize the tenants' loss for June 2013. I find that the landlord is entitled to a monetary award of \$950.00 for her loss of rent for June 2013.

Although the landlord's application does not seek to retain the pet damage or security deposits for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain both of these deposits plus applicable interest in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary Order in the landlord's favour against the male Tenant AP under the following terms, which allows the landlord to recover unpaid rent and loss of rent for May and June 2013, to recover the filing fee, and to retain the pet damage and security deposits for this tenancy:

Item	Amount
Unpaid May 2013 Rent	\$950.00
Loss of Rent for June 2013	950.00
Less Pet Damage and Security Deposits	-850.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,100.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these

Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession based on any of the notices to end tenancy issued to the tenant(s) are withdrawn. The tenants' application is dismissed 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: June 10, 2013

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Residential Tenancy Branch

