



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, FF  
                             MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

An agent for the landlord company and one of the tenants attended the hearing on the first day scheduled at which time the tenant applied for an adjournment for health reasons, and the landlord's agent opposed such an adjournment. In the circumstances, I found that the landlord would not be prejudiced by an adjournment but the tenants might be prejudiced if an adjournment was not granted. The matter was adjourned, and the parties were explained that any evidence either party wished to rely on must be provided to the other party and to the Residential Tenancy Branch at least 5 days before the new hearing date. The landlord provided 3 additional evidence packages prior to the new hearing date. The tenants provided evidentiary material prior to the commencement of the first day of the hearing, but did not provide any additional evidentiary material.

The parties were invited to discuss settlement of the disputes, however the male tenant became and remained extremely disruptive, refusing to allow the Arbitrator to hear from the landlord's agent, refusing to take direction from the Arbitrator and continually interrupted the landlord's agent and the Arbitrator. Despite being placed in Lecture Mode on the Web Portal on 3 occasions and being warned on all 3 occasions, the tenant continued to be disruptive, disrespectful and yelled at the Arbitrator without accepting any direction with respect to the conduct of the hearing, and the tenants were

removed from the conference call hearing. The landlord's agent remained on the line and the hearing continued in the absence of the tenants. During the tenant's rants, the tenant referred to certain issues, and although the tenant's submissions were not taken under affirmation, the landlord was questioned about those issues and those issues are considered in this Decision.

The tenant also advised that evidence from the landlord was not provided to the tenants, however the landlord has provided evidence of having sent the documents by registered mail and provided proof of registered mail being sent to the tenants, and I find that the tenants have received the landlord's evidence in accordance with the *Residential Tenancy Act* and the Residential Tenancy Branch Rules of Procedure, and all evidence provided by the parties has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Are the tenants entitled to a monetary order for return of all or part of the pet damage deposit or security deposit?

#### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on September 1, 2011 in this rental unit, having moved from another rental unit within the complex on that date. The fixed term expired on February 1, 2012 and then reverted to a month-to-month tenancy, which ultimately ended on January 31, 2013. The landlord had collected a security deposit from the tenants in the amount of \$540.00 while the tenants were resident in the first rental unit, which was transferred to the new rental unit and the landlord collected an additional \$110.00 for a security deposit on September 1, 2011. The landlord's agent testified that the second unit was more expensive and the additional security deposit brought the amount to half of the rent. The \$650.00 security deposit is still held in trust by the landlord company.

Rent in the amount of \$1,350.00 per month was originally payable under the tenancy agreement, however the landlord issued a Notice of Rent Increase effective September 1, 2012 which increased the rent to \$1,355.00 per month, payable on the 1<sup>st</sup> day of each month. The landlord's agent testified that the tenants continued to "dodge" the

landlord's agents and claimed to have not received the notice of rent increase, and the landlord gave the tenants the benefit of the doubt and changed the effective date of the increase to November 1, 2012 and had the tenant sign the landlord's copy of the notice of rent increase.

On January 1, 2013 the tenants provided the landlord with a notice to end the tenancy effective January 31, 2013 but did not pay rent for the month of January. The landlord claims \$1,355.00 for January's rent.

The landlord's agent testified that the tenants were in arrears of rent the sum of \$4.00 from the first rental unit, and provided a copy of a tenant ledger showing that amount in arrears. The landlord's agent also testified that the tenant ledger shows that the rental amount commencing September 1, 2012 was \$1,355.00 but the rent was paid by automatic withdrawal from the tenants' account and the automatic debit amount was not changed from \$1,300.00 to \$1,355.00 until November 1, 2013. The ledger therefore shows that the tenants were in arrears \$55.00 per month for September and October, 2012 in addition to the \$4.00 arrears taken from the first rental unit. The payment for the month of October was returned by the financial institution for insufficient funds. The tenants provided the landlord with a cheque for that month in the amount of \$1,300.00, but not the additional \$55.00 or the \$4.00. The rental withdrawal for the month of November, 2012 was also returned by the financial institution for insufficient funds which was ultimately paid by the tenants. The landlord also reversed the rental increase in the tenant ledger by \$110.00 to allow for the extension given by the landlord.

The landlord claims one month of rent in the amount of \$1,355.00 in addition to the \$4.00 arrears and recovery of the \$50.00 filing fee for the cost of the application. The landlord's agent further testified that despite receiving the tenants' notice to end the tenancy late, the landlord makes no further claims as against the tenants.

The tenants' evidentiary material includes a copy of a letter from the tenants to the landlord dated January 23, 2013 which requests return of the security deposit and provides the landlord with a forwarding address. The landlord's agent testified that the tenants have not provided the landlord with a forwarding address in writing, but the landlord received the forwarding address on the Tenant's Application for Dispute Resolution on February 19, 2013. The landlord's application was filed with the Residential Tenancy Branch on February 8, 2013.

### Analysis

I have reviewed the tenant ledger, and having heard from the landlord's agent, I am satisfied that the tenants are in arrears of rent for the month of January, 2013 in addition to the \$4.00 arrears accumulated from the previous rental unit within the complex. I am also satisfied that the \$4.00 arrears were owed by the tenants to the same landlord for a rental unit within the complex, and the landlord is entitled to make that claim.

I further find that of the \$114.00 that the tenant referred to during his rants \$110.00 was credited back to the tenants and the landlord did not collect that amount.

I therefore find that the landlord has established a monetary claim as against the tenants in the amount of \$1,359.00, being one month of rent and \$4.00 for previous arrears.

The tenants have provided no evidence that the forwarding address was provided to the landlord and I accept the testimony of the landlord's agent that the tenants' forwarding address was received on February 19, 2013 on the Tenant's Application for Dispute Resolution, which was after the landlord had applied to keep the security deposit in partial satisfaction of the landlord's claim. Having found that the landlord has established a monetary claim as against the tenants for unpaid rent, the tenants' application must be dismissed.

Since the landlord has been successful with this claim, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application. I order that the landlord keep the security deposit of \$650.00 in partial satisfaction of the claim, and I grant the landlord a monetary order for the difference in the amount of \$759.00.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$759.00.

This order is final and binding on the parties and may be enforced.

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 11, 2013

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Residential Tenancy Branch