



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPR OPB MND MNR MNSD FF  
For the tenant: MT CNR MNR MNDC MNSD RR

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities and due to the tenants breaching an agreement with the landlords, for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authorization to retain the tenants’ security deposit and pet damage deposit, and to recover the filing fee.

The female tenant applied for more time to make an application to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, for a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of all or part of the security deposit and pet damage deposit, and for authorization to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The female tenant (the “tenant”), the tenant’s mother/witness, and the landlords attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenant confirmed that she received the evidence from the landlords and that she had the opportunity to review that evidence prior to the hearing, however, was unable to open the digital evidence from the landlords. As a result, the digital evidence from the landlords was excluded from the hearing.

The tenant confirmed that she did not submit evidence, however, requested an adjournment for additional time to submit evidence which the landlords disputed as they were ready to proceed with their application and the tenant's cross application. As an adjournment would have prejudiced the landlords as they were ready to proceed, the tenant's request for an adjournment for additional time to submit evidence was denied. Both parties made the decision to submit an application. The tenant filed her application on May 16, 2013 and the landlord's filed their application on May 17, 2013. I find that both parties had ample opportunity to submit their evidence prior to this hearing and as a result, the hearing proceeded without an adjournment. I note that lack of preparation by either party is not sufficient grounds for an adjournment.

#### Preliminary and Procedural Matters

During the hearing, the parties confirmed that tenant had a note on the rental unit door that indicated that she was still inside the rental unit and for the landlords not to enter the rental unit. The parties confirmed that the tenant had occupancy of the rental unit until May 31, 2013 when she vacated the rental unit. The male tenant had vacated the rental earlier. The female tenant withdrew her request to cancel the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice"), to allow more time to dispute the 10 Day Notice, for a rent reduction and for a monetary order for the cost of emergency repairs as the tenancy has ended. The tenant's application proceeded with a claim of \$5,000.00 for money owed or compensation for damage or loss under the *Act*, and for the return of the security deposit.

As the tenancy has ended, I find that the landlord's no longer require an order of possession as they have obtained possession of the rental unit already based on their testimony. As a result, the landlord's application proceeded with a claim for \$1,800.00 for damage to the unit, site or property, for unpaid rent or utilities, and for authorization to retain all or part of the security deposit and pet damage deposit.

#### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

A month to month tenancy agreement began on November 1, 2012. Monthly rent in the amount of \$900.00 was due on the first day of each month. The tenants paid a security deposit of \$450.00 and a pet damage deposit of \$200.00 at the start of the tenancy.

The tenancy ended on May 31, 2013 by mutual agreement. A copy of the Mutual Agreement to End a Tenancy was submitted in evidence and was signed by the male tenant and male landlord and was dated May 21, 2013 and indicates that the tenancy ended on May 31, 2013.

### Tenant's claim

The tenant stated that she is seeking \$5,000.00 due to the presence of mould in the rental unit leading to the tenant needing CPR. The tenant confirmed that she did not submit any evidence in support of her claim for \$5,000.00. The tenant's mother did not provide testimony during the hearing.

### Landlords' claim

The landlords testified that they are seeking \$1,800.00 in unpaid rent comprised of \$900.00 for unpaid May 2013 and loss of June 2013 rent. The tenant confirmed she placed a "stop payment" on the May 2013 rent cheque. The landlords testified that they suffered a loss of June 2013 rent as the rental unit was damaged and they could not rent the rental unit due to the condition the rental unit was left in by the tenants. As the landlords' digital evidence was excluded, the landlords confirmed that they did not have any other supporting evidence to support the damage being alleged to the rental unit.

The landlords stated that the male tenant signed over both the \$450.00 security deposit and the \$200.00 pet damage deposit due to damage in the rental unit, some of which was caused by the tenants' pets, which the female tenant did not dispute. The landlords clarified during the hearing that the \$450.00 security deposit and \$200.00 pet damage deposits satisfied the \$650.00 damage they suffered to the rental unit.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I will first deal with the tenant's application. The tenant has applied for a monetary claim in the amount of \$5,000.00. The tenant alleges that due to the presence of mould in the rental unit she required CPR. The tenant confirmed that she did not submit any evidence in support of her application. At the very least, I would have expected the tenant to have submitted evidence that there was mould in the rental unit and documents to support that that mould caused specific medical health problems. **I find** that the tenant has provided insufficient evidence to support any of her claim. Therefore, **I dismiss** the tenant's claim in full, without leave to reapply, due to insufficient evidence.

I will now deal with the landlords' application. The landlords confirmed that they were granted permission by the male tenant to retain the full security deposit of \$450.00 and the pet damage deposit of \$200.00 towards damage to the rental unit in the amount of \$650.00. The female tenant did not dispute that deposits had already been signed over to the landlords. Therefore, **I find** the security deposit and pet damage deposit have already been signed over by the tenants for the purposes of damage to the rental unit, which included pet damage. Given the above, **I authorize** the landlords to retain both deposits as the parties mutually agreed that the deposits were surrendered in full to cover damage to the rental unit.

This leaves \$900.00 for unpaid May 2013 rent and loss of \$900.00 rent for June 2013. The female tenant had occupancy of the rental unit for May 2013. Section 26 of the *Act* requires that tenants pay rent when it is due in accordance with the tenancy agreement.

Therefore, **I find** the tenants breached section 26 of the *Act* and that the landlords have met the burden of proof that the tenants owe \$900.00 for May 2013 as a result.

Regarding the loss of rent for June 2013, the landlords testified that the tenancy ended on May 31, 2013 by mutual agreement. The landlords alleged that they were unable to re-rent the rental unit due to damage in the rental unit, however, failed to submit evidence to support their claim. Given the above, **I find** the landlords' provided insufficient evidence to support this portion of their claim. Therefore, **I dismiss** this portion of the landlords' claim without leave to reapply, due to insufficient evidence.

As the landlord's application had merit, **I grant** the landlords the recovery of their filing fee in the amount of **\$50.00**.

**I find** that the landlords have established a total monetary claim of **\$950.00** comprised of \$900.00 in unpaid rent for May 2013, plus the \$50.00 filing fee. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, in the amount of **\$950.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

I dismiss the tenants' application in full due to insufficient evidence, without leave to reapply.

I find that the landlords' claim had merit and that the landlords are entitled to monetary order pursuant to section 67 of the *Act*, in the amount of \$950.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 2, 2013