



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR CNR OPR RR MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent and for compensation for damages to the unit;;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) To order the landlord to comply with the Act;
- g) A rent rebate as compensation for lack of heat in the property; and
- h) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing and each confirmed the Notice to End Tenancy dated September 12, 2013 was posted on the door and received and they each received each other's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears? Has the landlord proved on the balance of probabilities that the tenants caused damages to the property, that they were beyond reasonable wear and tear and the amount owed? Is the landlord entitled to recover the filing fee for this application?

Or has the tenant demonstrated that the Notice to End Tenancy for unpaid rent should be set aside and that they are entitled to a rent rebate for heat not provided and to recover filing fees for the application?

**Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. This was a very contentious hearing but certain facts were undisputed. It is undisputed that the monthly tenancy commenced on July 1, 2013, that rent is \$1300 a month and a security deposit of \$650 and a pet damage deposit of \$100 was paid on June 24, 2013. It is undisputed that the tenant owes rent for August and September 2013 and did not give a one month Notice to End their tenancy when they vacated in the last week of September. An Order of Possession is no longer required as the tenants have vacated.

The landlord claims as follows:

\$3900: rent for August and September and rental loss for October 2013. The unit was re-rented as of November 1, 2013.

\$175: new locks for keys were not returned; the tenant said he left them in a basket where the landlord has picked up her mail as only this home was provided as the landlord's forwarding address.

\$120: for cleaning. The tenant said they cleaned the unit before moving but said the self clean oven did not work properly. The landlord said it was a new oven at the beginning of the tenancy and it was left dirty and the refrigerator was left with food in it.

\$275: for shampooing and sanitizing the carpet twice. The tenant said they had paid \$85 to clean the carpet at move-in and their dog was well trained.

\$50: NSF fees for July, August, September. The tenant agreed they had NSF cheques

\$35: for disposal of garbage and a truck.

\$225: for fees paid to trace the tenants and serve them and for the filing fee.

Invoices are in evidence to support the amounts claimed. The tenant pointed out that there was no GST number on them and he suspected they were fabricated. The parties agreed that no condition inspection report was done at move-in or move-out. The female landlord appeared vague on the issue of whether or not the unit was cleaned by the tenants as she did not inspect it but sent a person who cleans in her other buildings to clean the unit for new tenants. The male landlord said the oven and refrigerator were left unclean.

The tenants said they were afraid of the landlord for she had behaved aggressively one evening when she knocked on their windows and yelled. The landlord said she was responding to their letter where they offered to pay the rent if they would withdraw the

Notice to End Tenancy. When she got to the home about 9:15p.m., she knocked on the door and got no response although she could see both the tenants inside the unit. She said she was frustrated as they had promised to pay the rent many times and she had had a number of wasted trips so she banged on the window to get their attention. When they continued to refuse to answer the door, she left the written response by the door for them. The tenant contends they wanted to pay the rent, the landlord refused to take it and it was too late when she came to the door as they have a new infant. The time of the landlord's visit was disputed but it appeared to have occurred between 9:30p.m. and 10 p.m. when the landlord said she was told they were home.

In evidence is the Notice to End Tenancy for unpaid rent, a letter from the tenants dated September 18, 2013 stating they will get a bank draft for the rent arrears of \$2600 once the landlord has responded by letter saying that the eviction will not be pursued and the lack of heat addressed and an answering note from the landlord dated September 19, 2013 agreeing with the tenants' demands. In evidence is also an advertisement to re-rent the unit as of the end of September 2013 and a 24 hour notice to view the suite on September 19, 2013. The tenant submitted some documents late which outlined Bylaws of the Municipality regarding rental suites and notes from the internet criticizing the management of other buildings by these landlords.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord has satisfied the onus of proving that there are rent arrears of \$2600 for August and September 2013 and rental loss of \$1300 for October 2013. The landlord's evidence is supported by the tenant's evidence that they owed that amount of arrears and did not give one month's notice of their intention to vacate as required by section 45 of the Act. Although the tenant received a Notice to End Tenancy for unpaid rent under section 46, I find this does not relieve the tenant of the obligation to give one month's notice of their intention to vacate. As they did not do this and the landlord consequently lost rent for October, 2013, I find the landlord entitled to recover \$1300 for rental loss. In addition, I find the landlord entitled to recover \$50 for NSF fees which the tenant agreed were incurred.

I find the weight of the evidence is that the landlord did not receive the keys back. Although the tenant said they left them at the premises, they provided insufficient evidence to support this statement. Furthermore, they said that a landlord's agent had followed them when they moved to ascertain their new address yet they made no

mention of attempting to return keys to the agent. I find the landlord entitled to recover \$175 for the lock work required which is well supported by the invoice provided.

The testimony of the tenant and the landlord is conflicting with regard to the damage to the unit. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find there was no condition inspection report done at move-in or move-out and the tenants claim they cleaned the unit and should not be charged the cleaning costs invoiced by the landlord. I find the weight of the evidence is that the stove was new at move-in and was not thoroughly cleaned at move out as the tenant noted the burn clean feature did not work. I also find the landlord's evidence credible that there was some garbage left on the premises and food in the refrigerator as he provided an invoice for the fee for dumping and a truck. I find the landlord entitled to recover \$120 for the invoiced cost of four hours of cleaning and \$35 for the dumping fee and truck.

I find the landlord's evidence regarding the carpet having to be cleaned and sanitized twice was somewhat vague. However, I find that although the tenants only lived in the premises for 3 months, they had a pet which the Residential Tenancy Policy Guidelines 1-2, states may require the shampooing or steam cleaning of carpets at the end of the tenancy. However, I find the tenants' evidence credible that they had the carpets cleaned once at a cost of \$85 during the tenancy and I find insufficient evidence to support the landlord's claim for the cost of cleaning and sanitizing the carpets twice at the end of the tenancy. I find the landlord entitled to recover the cost of cleaning and sanitizing them once which would be \$137.50. In respect to the \$225 claim for service of documents and tracing, I find the landlord entitled to recover only the \$50 filing fee pursuant to section 72 of the Act and not the costs of other legal processes to file and support their claim.

The tenants did not request a monetary order on their application but attempted to claim moving costs in the hearing. I find on the principles of natural justice that a person must be informed of the claim against them so I dismiss this claim of the tenant as the landlord was not informed on the application.

On the tenant's application, the onus is on him to prove on the balance of probabilities that they are entitled to a rebate of rent for the facility of heat not being provided. While it is an obligation of the landlord to supply heat to the premises, I find insufficient evidence provided by the tenant that the landlord was informed of the problem and

failed to fix it within a reasonable time. In fact, in the reply to the letter of the tenant, the landlord said they would come to investigate the issue with the heat but the tenant moved out before this was done. I dismiss the claim of the tenant for a rebate of rent. I decline to consider and comment upon the late documents submitted by the tenant; they were late and were printouts from the internet which I find is not relevant evidence in this hearing.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply and I find they are not entitled to recover filing fees for this application.

I find the landlord entitled to a monetary order as calculated below and to recover filing fees for this application. I find the landlord entitled to retain the security and pet damage deposits to offset the amount owing. I find the deduction of the pet damage deposit is appropriate as the carpet cleaning and sanitizing is related to the pet.

Calculation of Monetary Award:

|                                                       |         |
|-------------------------------------------------------|---------|
| Rent arrears August –Sept. 2013                       | 2600.00 |
| Rental loss October 2013                              | 1300.00 |
| NSF cheque fees                                       | 50.00   |
| Lock and labour                                       | 175.00  |
| Cleaning fee                                          | 120.00  |
| Carpet cleaning allowance                             | 137.50  |
| Garbage disposal and truck                            | 35.00   |
| Filing fee                                            | 50.00   |
| Less security and pet damage deposit(no interest 2012 | -750.00 |
| Total Monetary Order to Landlord                      | 3717.5  |

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: October 29, 2013

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Residential Tenancy Branch

