



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MND, MNR, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:19 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male landlord testified that he posted a 10 Day Notice to End tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on September 11, 2013. The male landlord testified that he handed the tenant a copy of the landlords' dispute resolution hearing package on October 7, 2013. I am satisfied that the landlords have served the above documents to the tenant in accordance with the *Act*.

The landlords testified that the tenant abandoned this tenancy without leaving them keys to access the rental unit before November 4, 2013. The landlords testified that they gained access to the rental unit as of November 4, 2013. As they now have possession of the rental unit, they withdrew their application for an Order of Possession based on the 10 Day Notice. However, the male landlord requested an additional monetary award to reflect additional unpaid rent, and damage to the rental unit that became apparent after he handed the tenant the landlords' dispute resolution hearing package. The male landlord requested permission to increase the amount of the landlords' requested monetary award from \$4,300.00, the amount identified in their original application, to \$9,200.00. He said that this increase reflected additional unpaid rent and damage to the rental unit.

The male landlord testified that the original application for dispute resolution requested a monetary award of \$1,600.00 in unpaid rent owing for June, July and August 2013 less \$1,000.00 that was paid by the tenant in June 2013. I noted that these figures total \$3,800.00, and not \$4,300.00 as identified in the monetary award the landlords were seeking in their original application for dispute resolution. I also noted that the landlords' original application identified four months of rent owing, which would presumably have included September 2013. Under these circumstances, I allow the landlords to increase the amount of their requested monetary award by \$1,600.00, to reflect the landlords' claim that the tenant failed to pay monthly rent for September 2013, and a further \$1,600.00 for October 2013, in addition to the amounts cited in their original application for dispute resolution. I allow the landlords to increase their requested monetary award for unpaid rent from \$4,300.00 to \$7,000.00.

The landlords have not served the tenant with specific notice regarding alleged damage that occurred during this tenancy, nor have the landlords served the tenant with any evidence with respect to this alleged damage. No portion of the amounts cited in their original application for dispute resolution was to cover damage. For these reasons, I cannot consider the landlords' request to increase the amount of their desired monetary award beyond \$7,000.00 to \$9,200.00, as they have requested. The landlords have leave to apply for a monetary award for damage arising out of this tenancy that has become apparent once they obtained possession of the rental unit.

At the hearing, the female landlord referred to late written and photographic evidence that she said she had faxed to the Residential Tenancy Branch (the RTB) twice. As I had not received this late evidence, I agreed to allow the landlords to re-send their faxed evidence later that day. The RTB subsequently received the landlords' fax before the end of the business day on the day of the hearing. I have referred to this late written evidence to the extent that it confirms the tenancy agreement they had in place with the tenant and the amounts owing. I also note that the landlord's handwritten Monetary Order Worksheet identified a requested monetary Order of \$8,200.00 and not \$9,200.00, as the male landlord requested at the teleconference hearing.

#### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent arising out of this tenancy? Are the landlords entitled to recover the filing fee for their application?

#### Background and Evidence

This periodic tenancy began on August 1, 2012. Monthly rent was set at \$1,600.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$800.00 security deposit paid on August 1, 2012.

The landlords testified that the only payment they have received from the tenant since June 1, 2013, has been a \$1,000.00 payment from the tenant in June 2013. They testified that after serving the tenant with the dispute resolution hearing package, the tenant apparently left the premises and changed the locks. They entered the rental unit on November 4, 2013, when it had become apparent that the tenant had abandoned the rental unit.

### Analysis

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. In this case, there is undisputed sworn testimony and written evidence, in the form of the landlords' original application for dispute resolution, that only \$1,000.00 has been paid by the tenant to the landlords since June 1, 2013. As such, the landlords are entitled to compensation for unpaid rent incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*. Under these circumstances, I allow the landlords' claim for unpaid rent for June 2013, in the amount of \$600.00, and from July 1, 2013 through October 31, 2013, in the amount of \$1,600.00 for each of these four months.

I also allow the landlords to recover their \$50.00 filing fee from the tenant. Although the landlords' application does not seek to retain the tenant's \$800.00 security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to obtain a monetary award for unpaid rent owing from this tenancy and for the recovery of their filing fee, less the value of the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
June 2013 Rent Owing (\$1,600.00 - \$1,000.00 = \$600.00)	\$600.00
Unpaid July 2013 Rent	1,600.00
Unpaid August 2013 Rent	1,600.00
Unpaid September 2013 Rent	1,600.00
Unpaid October 2013 Rent	1,600.00
Less Security Deposit	-800.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$6,250.00</b>

The landlords are 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 landlords' application for an Order of Possession for unpaid rent is withdrawn.

The landlords have leave to apply for a monetary award for damage arising out of this tenancy that has become apparent once they obtained possession of the rental unit.

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: November 14, 2013

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Residential Tenancy Branch

