



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, CNR, MNDC

### Introduction

This hearing dealt with an application by the landlord for a monetary order, an order of possession and an order to retain the security deposit in partial satisfaction of the claim. The tenant has filed an application seeking to have the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities set aside, a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement. Both parties participated in the hearing. Both parties gave affirmed evidence.

### Issue to be Decided

Is either party entitled to any of the above under the Act, regulation or the tenancy agreement?

### Background, Evidence and Analysis

At the outset of the hearing both parties advised that the tenancy has come to an end and that the tenant moved out in mid January, accordingly the issue of the tenancy is no longer before and I therefore dismiss the request for an order of possession and the cross application of setting the notice aside. The relationship between the two parties is an acrimonious one, the level of hostility towards each other was very apparent throughout the hearing.

The tenancy began about 4 and half years ago and ended on January 10, 2014. On June 30, 2013 the parties signed a three year fixed term agreement that was to end on June 30, 2016. The tenants were obligated to pay \$1200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$450.00 security deposit and a \$200.00 pet deposit.

Both parties stated that they are still seeking a monetary order. As both parties have filed for a monetary claim I will address their claims and my findings as follows.

**Landlords Claim** – The landlord is seeking \$1200.00 unpaid rent for the month of January 2014 and \$1200.00 for loss of revenue for the month of February 2014. The landlord served the tenant with a notice on January 3, 2014. The tenant acknowledged the receipt and content of the notice. The tenant stated that she disputes this claim. The tenant stated that she didn't pay the rent because she lived there only until January 10, 2014 and that she was bullied out of her home. The tenant did not provide sufficient evidence of this allegation. The tenant did not have an order from the Branch or the landlords consent to withhold the rent. The tenant was obligated to pay the rent by the first of January as per their tenancy agreement. I find that the landlord is entitled to \$1200.00 in unpaid rent. The landlord is not entitled to the loss of revenue as they have not provided sufficient evidence of mitigating their losses as required by the Act and therefore I dismiss the claim for loss of revenue.

**Tenants Claim** – The tenant is seeking \$150.00 for a day of lost wages, \$180.00 for loss of personal items due to a washing machine flooding their unit, and \$675.00 for having to deal with a disruptive former tenant from February 1, 2013 to June 14, 2013.

The tenant stated that on October 1, 2013 the washing machine "flooded their suite" causing damage to some personal items. The tenant stated that the landlord had just recently repaired the washing machine but didn't put all the parts back in thus being responsible for the flood and subsequent damage. The landlord disputed this claim. He stated that the parts were put back in and that when he inspected the washing machine after the leak he found a queen size comforter "squished into one side of the washer". The landlord stated that the tenant agreed to obtain her own contents insurance as part of their tenancy agreement. The landlord stated that the tenant was at fault as she had overloaded the washing machine.

The tenant is seeking \$675.00 for loss of quiet enjoyment. The tenant stated that a previous tenant had been a major disturbance. The subject tenant stated the previous tenant was a "crack head" and that she would yell and scream at all hours of the day. The tenant stated she felt unsafe in her own home due to the volatile nature of the former tenant. The landlord disputed this claim. The landlords stated that they had made numerous calls to the Branch and followed the advice they were given. The landlords stated that when this issue was brought to their attention they did the following: verbally warned the previous tenant, letters of warning, issued a notice, had an arbitration hearing, obtained an order of possession, obtain a writ of possession, and hire bailiffs to remove the tenants' items. The landlords stated that if they could have

done this quicker they would have but they were subject to the timelines of the Act and the scheduling and workload of the Branch. The landlords stated that they responded immediately to all complaints.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant has not satisfied on all four of the above grounds as required on either of her claims. Based on the insufficient evidence, the disputing testimony of the landlord and on the balance of probabilities I dismiss the tenants' application in its entirety.

### Conclusion

The landlord has established a claim for \$1200.00. The landlord is entitled to the recovery of the \$50.00 filing fee. I order that the landlord retain the \$400.00 deposit and the \$250.00 pet deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$600.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 29, 2014

---

Residential Tenancy Branch

