



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MSND, MNDC, CNC, CNR, OLC, PSF, RPP, RR  
FF

### Introduction

This hearing dealt with two related applications. File T is the tenant's application for orders cancelling a 10 Day Notice to End Tenancy for Non-Payment of Rent; cancelling a 1 Month Notice to End Tenancy for Cause; compelling the landlord to comply with the Act, regulation or tenancy agreement; compelling the landlord to provide services or facilities required by law; compelling the landlord to return the tenant's personal property; and to reduce the rent for repairs, services or facilities agreed upon but not provided. File L is the landlord's application for an order of possession, a monetary order, and an order permitting retention of the security deposit in partial satisfaction of the claim. As the parties and circumstances are the same for both applications one decision will be rendered for both.

The tenant served one copy of his application for dispute resolution on the male landlord only. I find there was no service of the application for dispute resolution on the female landlord. Any claim against the female landlord is dismissed with leave to re-apply.

As of the date of the hearing the tenant had moved out of the rental unit. As a result, the applications for an order of possession, setting aside the notices to end tenancy; compelling the landlord to comply with the Act, regulation or tenancy agreement; and compelling the landlord to provide services required by law; were no longer relevant. In addition, the tenant's personal property had been returned to him by the landlord so the application for return of personal property was no longer relevant.

Although served with the tenant's application for dispute resolution and notice of hearing and having served and filed his own application for dispute resolution against the tenant together with written evidence in support of his claim, the landlord did not appear at the

hearing. In making my decision I have considered the sworn oral testimony of the tenant as well as the written material filed by both parties in advance of the hearing.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced May 1, 2013. The rental unit is a basement suite. The landlords live upstairs and there is a shared laundry facility. The tenant's two school age sons live with him half-time.

The monthly rent of \$1100.00 was due on the first day of the month. There was no written tenancy agreement but a receipt given to the tenant on April 13 stated that \$500.00 had been received for the deposit leaving a balance of \$50.00 which was to be paid as soon as possible. The document also said: "Agreed on pet damage deposit, the amount of \$550.00 to be paid at an early point after moved in and settled."

Subsequently, the parties agreed that the tenant would pay \$70.00 per month, also due on the first day of the month, for cable and Internet access.

A move-in condition inspection report was not completed.

The parties written submissions agree that \$40.00 was paid towards the security deposit on May 1 and the final \$10.00 was paid on July 3. Their submissions also agree that \$50.00 was paid towards the pet damage deposit on October 3 and a further \$100.00 was paid on November 1.

As of November 1 the November rent had been paid; the cable and Internet was paid to September 15; the security deposit had been paid in full; and \$150.00 had been paid towards the pet damage deposit.

On November 19 the tenant paid the landlord \$640.00 in cash.

On November 28 the landlord spoke to the tenant and advised that he was going to be serving the tenant with a 1 Month Notice to End Tenancy for Cause, with an effective date of January 31, 2014, before the end of the month. The next day the tenant advised the landlord that he had found a new place and would be moving out before the middle of December.

There then ensued several days of conflict between the parties about proper notice to end tenancy, the allocation of the funds paid on November 19, access to some of the tenant's belongings, and the tenant's access to cable, Internet and laundry facilities.

On November 30 the landlord served the tenant with the 1 Month Notice to End Tenancy for Cause and on December 2 he served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent.

On December 2 the tenant issued and served his application for dispute resolution. He also gave the landlord his new address in writing.

On December 6 the landlord issued his application for dispute resolution asking for an order of possession and claiming for unpaid rent and loss of future rent. It was served by registered mail sent to the tenant's new address.

The tenant moved out on December 10 without having paid anything further for the December rent.

The tenant testified that the heat was turned off in the unit for most of one day. The landlord's written material describes how a switch was accidentally turned off and notes that the rental unit is equipped with a gas fireplace. The tenant described the accident as "very coincidental".

The tenant says he was without cable and Internet service from November 29 to December 10. He works from home so this interruption of service was very convenient for him. In his written material the landlord acknowledges that he did turn off the Wifi because he was afraid of the tenant "messing with his computers over the network". He also stated that he did not expect the tenant to pay for cable and Internet access for December.

The evidence of both parties is that access to the laundry room, which also provides access to the landlords' unit, was blocked by the landlord from December 1 onwards.

The landlord gave the tenant receipts showing that he applied the \$640.00 payment made on November 19 as follows: \$400.00 to the balance owed on the pet damage deposit; \$105.00 for cable and Internet service from October 15 to November 30; and \$135.00 towards the December rent. The tenant says the money should have been applied as follows: \$550.00 as a prepayment towards the December rent; \$50.00 to the pet damage deposit; and \$40.00 towards cable and Internet service.

### Analysis

I find that the payment made on November 19 by the tenant should be allocated in the manner he requests for two reasons: the initial agreement did not specify a date by which the deposit had to be paid in full and the landlord had been accepting partial payments towards the pet damage deposit; and I must give greater weight to the sworn testimony of any party over an unsworn written submission.

The tenant is responsible for the December rent subject to the landlord's statutory obligation to mitigate their damages by attempting to re-rent the unit as soon as possible. As the landlord did not attend the hearing there is no evidence about his efforts, if any, to mitigate the loss. Accordingly, I find that the tenant is responsible for half of the December rent, which he has paid. The landlord has leave to re-apply for any claim for unpaid rent or loss of rental income after December 15.

I find that the tenant is responsible for cable and Internet access from October 15 to November 30 in the amount of \$105.00. After crediting the \$40.0 payment made on November 19 the tenant still owes \$65.00 for cable and Internet access. With respect to the tenant's claim for a reduction in rent as compensation for the interruption of service the parties had already placed a value on this service of \$70.00 per month. The tenant did not receive any services for December and is not required to pay anything further for cable and Internet access.

I find that the interruption in heat was for less than one day and accordingly award nothing for this item.

With respect to the loss of access to the laundry room the tenant lives alone half of the week and with his sons the other half. There is no evidence that he actually had to take his laundry elsewhere or whether he just caught up on his laundry when he moved into his new place. Accordingly, nothing will be allowed for this item.

Section 23 of the *Residential Tenancy Act* provides that at the beginning of every tenancy the landlord and tenant must conduct a move-in inspection together and complete a move-in condition inspection report in accordance with the regulation. Section 24 sets out the consequences for both parties if the inspection is not conducted, the report not completed, or a copy of the report not given to the tenant. For landlords the consequence is that their right to claim against the security deposit or pet damage deposit is extinguished.

Section 38(1) provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the

landlord must either repay the security deposit to the tenant or, if the landlord has the legal right to do so, file an application for dispute resolution claiming against the deposit.

In this case the landlord received the tenant's forwarding address in writing on December 2 and the tenancy ended on December 10. Although the landlord did file this application for dispute resolution within 15 days of both of these dates, his right to claim against the security deposit and the pet damage deposit had been extinguished. As the landlord had lost the right to file a claim against the security deposit or pet damage deposit, he was obliged to return the full amount within 15 days.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit and the pet damage deposit. The legislation does not provide any flexibility on this issue.

The landlord did not return the security deposit or the pet damage deposit to the tenant within 15 days and is therefore subject to the section 38(6) penalty. The landlord must pay the tenant the sum of \$1100.00, double the amount of the security deposit, and \$300.00, double the amount paid towards the pet damage deposit, for a total of \$1400.00.

It is important to note that although section 24 prevents a landlord from claiming against a security deposit or pet damage deposit if they have not complied with section 23, that sections does not prevent a landlord from filing a separate application for dispute resolution against the tenant for a monetary order for any damages or cleaning costs that may be proven at that hearing.

I have found that the tenant owes the landlord \$65.00 for cable and Internet access and the landlord owes the tenant the sum of \$1400.00 for failure to return the security and pet damage deposits within the time required. Setting one amount off against the other I find that the landlord must pay the tenant the sum of \$1335.00.

Finally, as the tenant was substantially successful on his application I find that he is entitled to reimbursement from the landlord of the \$50.00 fee he paid to file it.

### Conclusion

I award the tenant a monetary order, against the male landlord only, in the amount of \$1385.00, as set out above. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

The claim against the female landlord is dismissed with leave to re-apply.

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 22, 2014

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Residential Tenancy Branch