



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; water bills; late fees; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord submitted that the hearing documents were given to each tenant personally on December 18, 2013 in the backyard of the residential property. I was satisfied the tenants were served with the hearing documents in a manner that complies with the Act and I continued to hear from the landlord without the tenants present.

At the commencement of the hearing the landlord confirmed that he found the rental unit vacated in early January 2014 and the landlord has regained possession of the rental unit. Since the landlord has regained possession of the rental unit an Order of Possession is no longer required and I do not provide one with this decision. Therefore, the remainder of this decision deals with the landlord's monetary claim only.

The landlord indicated that he wished to deal with costs incurred for damage, cleaning and garbage removal subsequent to finding the rental unit vacant. I did not permit the landlord to amend his application to deal with such costs as the landlord did not serve the Branch or the tenants with an amended application or evidence to support such claims. To permit the landlord to increase his claim to include amounts that the tenants are unaware of would be contrary to the principles of natural justice. I did; however, inform the landlord of his right to file another Application for Dispute Resolution to seek recovery of such amounts within the time limit established by the Act.

### Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent, water bills, and late fees?
2. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The one-year fixed term tenancy commenced on August 1, 2013 and the tenants paid a security deposit of \$650.00. The tenants were required to pay rent of \$1,300.00 on the 1<sup>st</sup> day of every month plus utilities. The water bill was in the landlord's name and the landlord would request the tenants pay him for the water bills; however, tenants refused. The tenancy agreement does not contain a provision for payment of late fees.

The tenants failed to pay rent for September 2013 and on September 5, 2013 the landlord personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) with a stated effective date of September 15, 2013. The 10 Day Notice indicates the tenants failed to pay rent of \$1,350.00 and utilities of \$100.00 as of September 1, 2013. The tenants did not pay the outstanding rent for September 2013, did not pay any monies for the following months, and refused to move out.

The landlord finally filed this Application for Dispute Resolution and served it upon the tenants on December 18, 2013. In early January 2014 the landlord found the rental unit vacated; however, the tenants did not return the keys and left the property full of garbage. As of the date of the hearing the property has not been re-rented.

In filing this application the landlord requested compensation for unpaid and/or loss of rent for the months of September 2013 through January 2014; water bills of \$200.00; and, late fees of \$125.00.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; the 10 Day Notice; water bills for the months of May 2013 through October 2013.

The landlord stated that at the time of filing he had not yet received the water bill for the billing period of November/December 2013; thus, the claim for water bills was estimated. The landlord also explained that the water bill for the July/August 2013 period reflected water use in August 2013 only since the unit was vacant before the tenants moved in. The landlord provided the water bill for May/June 2013 to show there was no consumption in the months prior to the tenancy commencing.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. I was not presented any evidence to suggest the tenant had a legal right to withhold rent. Where a tenant fails to pay rent, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice, the tenant has five days to pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice; otherwise, the tenant must vacate the rental unit by the effective date of the Notice.

Upon review of the undisputed evidence presented to me, I find the tenants violated the Act by: failing to pay rent that was due to the landlord for the month of September 2013; failing to vacate the rental unit by the effective date of the 10 Day Notice; failing to leave the rental unit reasonably clean and return keys to the landlord. I find that the tenants' actions caused the landlord to incur loss of rent for the months of September 2013 through January 2014. Therefore, I grant the landlord's claim to recover \$6,500.00, as claimed.

Upon review of the tenancy agreement, I accept that the tenants were required to pay for utilities in addition to rent. Upon review of the water bills, I find the landlord has established that the tenants owe him \$94.74 for the period of August 2013 through October 2013. Based on the consumption for the September/October 2013 billing period, I further award the landlord an estimated \$36.85 for the period of November/December 2013. Therefore, I award the landlord a total of \$131.59 for water bills.

I make no award for recovery of late fees since the tenancy agreement did not contain a provision for the payment of late fees. As provided in the Residential Tenancy Regulations, in order for a landlord to collect a late fee up to a maximum of \$25.00, the tenancy agreement must reflect such an agreement.

I further award the landlord recovery of the filing fee paid for this application and I authorize the landlord to retain the security deposit in partial satisfaction of the unpaid rent.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid and/or Loss of Rent	\$6,500.00
Water bills	131.59
Filing fee	100.00
Less: security deposit	<u>(650.00)</u>
Monetary Order	\$6,081.59

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$6,081.59 to serve and enforce as necessary.

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: February 07, 2014

---

Residential Tenancy Branch

