



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords only.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 17, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5<sup>th</sup> day after it was mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

The landlord submits the tenant vacated the rental unit. The landlord states she is not sure exactly when the tenant vacated the rental unit but it was at least by February 1, 2014. As such, the landlords no longer need an order of possession. I amend the landlords' Application to exclude matters of possession.

The landlord submitted an amended Application for Dispute Resolution and additional evidence regarding her claim on February 17, 2014. The landlord confirmed in her testimony that she served the tenant with this amended Application and evidence by sending it by registered mail to the dispute address, because she did not have the tenant's forwarding address.

As the landlords mailed the tenant their mailed their amended Application and evidence to the dispute address at least 17 days after they were aware the tenant had vacated

the residential property I find the landlords have failed to serve the tenant in accordance with Section 88 of the *Act* and as such, I decline the landlords' amendment.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for a phone bill and for utilities; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted a tenancy agreement signed by the parties on September 1, 2012 for 6 month fixed term tenancy beginning on September 1, 2012 that converted to a month to month tenancy on March 1, 2013 and that the parties later converted back to a fixed term tenancy by signing an extension on November 29, 2013 to end the tenancy on February 28, 2014. The monthly rent was \$1,430.00 and the landlord holds a security deposit of \$800.00 and pet damage deposit of \$100.00.

The landlord submits the tenant failed to pay rent for the month of January 2014 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. As per the above, the landlord states the tenant vacated the rental unit sometime before February 1, 2014. The landlord seeks rent for the months of January and February 2014.

The landlord submits that she began advertising the unit was available for rent as of the last week of February 2014. She states that rental unit required cleaning and repairs that made it unsuitable to show potential tenants. The landlord provided no evidence that I could consider of the condition of the rental unit, such as a move in or move out condition inspection.

The landlord also seeks utility costs in the amount of \$223.00. The landlord has submitted a statement showing the tenant owed utilities to January 3, 2014 in the amount of \$180.87 for garbage, sewer, and water. The landlord estimated the tenant would owe \$60.29 for January 2014 utilities.

The tenant also seeks compensation in the amount of \$550.00 for a telephone bill. The landlord submits that the landlord allowed the tenant to use their phone and the tenant owed this amount on that bill. The landlord confirmed this provision was not part of the tenancy agreement.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept the landlord's undisputed evidence that the tenant failed to pay rent for the month of January 2014 and that the tenant vacated the rental unit sometime prior to February 1, 2014 and therefore prior to the end of the fixed term tenancy. As such, I find the tenant is responsible for the payment of rent for January. In relation to the rent for the month of February 2014, I find the tenant is responsible subject only to the landlord's obligation to mitigate their damages or losses.

Section 7(1) of the *Act* stipulates that if a landlord or tenant does not comply with the *Act*, regulations or tenancy agreement the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As the landlord did not adequately attempt to determine if the tenant had vacated the rental unit in accordance with the 10 Day Notice and as the landlord did nothing to advertise the availability of the rental unit until the last week of February I find the landlords took no steps to mitigate their damages or losses for February 2014 rent. As such, I dismiss this portion of the landlords' claim.

Based on the landlord's undisputed evidence I find the landlord has established the tenant owes the landlord an amount of at least \$223.00 in utility costs. However, in relation to the landlord's claim for \$550.00 for phone charges, I find that the phone usage was not a component of the tenancy agreement and therefore I decline jurisdiction to hear this matter.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,703.00** comprised of \$1,430.00 rent owed; \$223.00 utilities and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of \$900.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$803.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 28, 2014

---

Residential Tenancy Branch

