



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR  
MNDC, RPP, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord return the tenant's personal property; and to recover the filing fee from the landlord for the cost of the application.

The landlord attended the hearing, but was represented by an agent who advised that the landlord did not speak English. An observer was also present who identified himself as a family member, but did not testify. The tenant also attended. The landlord's agent and the tenant each gave affirmed testimony and each provided evidentiary material to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the landlord's agent stated that the tenant has vacated the rental unit and therefore the landlord's application for an Order of Possession is withdrawn. Also, the tenant stated that the tenant's personal property has been returned to the tenant and the tenant withdraws that portion of the tenant's application.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for moving expenses?

### Background and Evidence

The parties agree that this fixed term tenancy began on November 1, 2012 and expired on October 31, 2013 and then reverted to a month-to-month tenancy. Rent in the amount of \$1,100.00 per month was payable in advance on the 1<sup>st</sup> day of each month. The parties signed a tenancy agreement on October 8, 2012, and the landlord collected a security deposit from the tenant in the amount of \$550.00 which is still held in trust by the landlord.

The tenant testified that the landlord moved the tenant out of the rental unit when the tenant was not home, without complying with the *Residential Tenancy Act* and without obtaining an order.

The tenant claims moving expenses and return of the security deposit. The tenant is living with her sister, and has estimated moving costs to include \$130.00 for a van, \$145.00 per month for storage of the tenant's personal property, but has not provided any receipts or other evidence and does not know how long she will require a storage unit.

The tenant has provided the landlord with a forwarding address in writing by serving the landlord with the Tenant's Application for Dispute Resolution, but has not previously provided it.

The landlord's agent testified that the tenant has been repeatedly late paying rent and has been running arrears of rent since December, 2013. To date the tenant has only paid \$600.00 toward December's rent, leaving a balance of \$500.00 outstanding; has only paid \$800.00 towards rent for January and \$800.00 towards rent for February, 2014, and now rental arrears have accumulated to \$1,100.00. Further, the tenant had asked during the tenancy for an upgrade to the television cable and agreed to an extra \$15.00 per month for that service, and currently owes the landlord \$45.00. The landlord has been asking for payment of arrears since December and the tenant continuously made promises without paying rent, but was able to go on a holiday to Paris, which caused great frustration to the landlord.

The landlord's agent also testified that the tenancy agreement, a copy of which has been provided for this hearing states that late payments of rent will be charged a fee of \$20.00, and the landlord claims \$60.00 in late fees for the 3 months.

Both parties have provided numerous text messages sent back and forth to each other, some of which are dated and some of which are not.

### Analysis

The *Residential Tenancy Act* states that a tenancy ends only in certain circumstances, and moving a tenant out without providing the notice required by law is certainly not one of those circumstances. If a tenant does not pay rent when it is due, the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant has 5 days to pay the rent in full, in which case the notice has no effect, or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be at least 10 days after the tenant is served, and must move out by that date. Where a landlord moves a tenant out of a rental unit contrary to the *Residential Tenancy Act*, a tenant is entitled to apply for damages.

I have read the text messages, and it is clear that the landlord was patient for a time, but eventually got frustrated with the lack of payments toward rent. A tenant must pay rent when it is due, and repeated late rent payments can be cause to evict even if the rent gets paid.

The landlord's agent testified that the tenant is in arrears \$1,100.00 for rent and \$45.00 for cable. I have also reviewed the tenancy agreement and find that the tenant has been late with the rent for the months of December, 2013, and January and February, 2014, and the tenancy agreement provides for a late payment fee of \$20.00 late payment. The testimony and evidence is not disputed by the tenant. Therefore, I find that the landlord has established a monetary claim as against the tenant for \$1,205.00.

The landlord does not dispute the method of moving the tenant out of the rental unit, and I find that the tenant is entitled to moving expenses. Where a landlord gives a tenant a notice to move out so the landlord can use the property for another reason, the landlord is required to pay to the tenant compensation equal to one month's rent. Where a landlord illegally moves a tenant out of a rental unit when the tenant is not at home is an invasion of the tenant's rights, and I find that, in the absence of any evidence of other costs the tenant has incurred the tenant is entitled to a monetary order for the equivalent of double one month's rent, or \$2,200.00.

The landlord currently holds a security deposit in the amount of \$550.00 and the tenant asked during the course of the hearing for it to be returned, and I so order.

Having found that the tenant owes the landlord \$1,205.00 and the landlord owes the tenant \$2,750.00, I order that the amounts be set off from one another, and I order the landlord to pay to the tenant the difference in the amount of \$1,545.00.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

The tenant's application for an order that the landlord return the tenant's personal property is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,545.00.

This order is final and binding on the parties and may be enforced.

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: March 18, 2014

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Residential Tenancy Branch

