



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

In the Details of the Dispute section of her application for dispute resolution, the landlord also informed the tenants and the Residential Tenancy Branch (the RTB) that she was also seeking a monetary award to remove garbage and furniture from the rental unit.

The tenants did not attend this hearing, although I waited until 9:56 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she handed a copy of her dispute resolution hearing package to Tenant MG on February 26, 2014. I find that the landlord served this package to Tenant MG as declared by the landlord on February 26, 2014. The landlord also testified that she sent Tenant JF a copy of her dispute resolution hearing package by registered mail on February 27, 2014. She entered into written evidence a copy of the Canada Post Customer Receipt including the Tracking Number to confirm this registered mailing. In accordance with sections 89(1) and 90 of the *Act*, I find that Tenant JF was deemed served with the landlord's dispute resolution hearing package on March 4, 2014, the fifth business day after its mailing.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The landlord testified that Tenant JF moved into the rental unit on or about July 31, 2011, with two other tenants. She said that the current periodic tenancy with the Respondents began on November 1, 2012. According to the terms of the Residential Tenancy Agreement (the Agreement) and Addendum entered into written evidence by the landlord, monthly rent was set at \$1,425.00, payable in advance on the first of each month, plus 40% of the hydro and heating costs.

The landlord said that the tenants gave their notice to end tenancy by email in mid-December 2013. As per their email, the tenants vacated the rental unit by January 31, 2014, when the keys were returned by the tenants.

The landlord entered into written evidence a copy of the July 31, 2011 joint move-in condition inspection report and the January 31, 2014 joint move-out condition inspection report. In that report, Tenant JF gave his written authorization to the landlord to keep the \$712.50 security deposit paid by the tenants on November 4, 2012.

The landlord maintained that a \$950.00 cheque provided by Tenant JF to complete the tenants' rental payment for January 2014 was returned by the landlord's bank because of insufficient funds. The landlord's application for a monetary award of \$2,212.50 included a request for the recovery of the \$950.00 NSF cheque for January 2014, and a \$50.00 NSF cheque fee set out in the terms of the Agreement. The landlord also requested the recovery of \$712.50 in utilities from the tenants from the period from September 30, 2013 until January 31, 2014, when this tenancy ended. The landlord's application also included a request for \$500.0 in costs incurred to remove garbage and furniture that remained at the end of this tenancy. In this regard, the landlord entered into written evidence a copy of a \$524.66 bill from a junk removal company for material removed from the rental unit.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. There is undisputed evidence that the tenants did not pay \$950.00 of the rent owing for January 2014, the last month of their tenancy. As such, I find that the landlord is entitled to compensation for \$950.00 in losses incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*. As per section 10 of the Addendum to the Agreement that the landlord and tenants signed and initialled on November 4, 2012, I also find that the landlord is entitled to a monetary award of \$50.00 as an N.S.F. charge for the tenants' provision of an N.S.F. cheque in payment of rent.

After reviewing the hydro and heating bills entered into written evidence by the landlord, I find that the landlord has established entitlement to a total of \$384.15, the actual amounts identified as owed by the tenants in these bills.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I am satisfied that the landlord has supplied copies of a bill demonstrating that she incurred \$524.66 in costs in removing garbage and furniture from this rental property arising out of this tenancy. Although the joint move-out condition inspection report indicated that the upstairs tenant would remove this material and ensure that it went to the garbage, I am satisfied by the landlord's undisputed sworn testimony that this did not occur and resulted in the above loss by the landlord.

Section 38(4)(a) of the *Act* allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." As noted above, Tenant JF did sign a security deposit statement as part of the joint move-out condition inspection of January 31, 2014, in which he agreed to let the landlord keep the \$712.50 security deposit from this tenancy. While there is also a statement in that report that the deposit will pay toward the utilities from October 2013 until January 2014, there is nothing specific in the statement restricting the landlord from applying the security deposit to unpaid rent or other damage arising out of this tenancy. Although the landlord has not applied to retain the tenants' security deposit, I find that the landlord has obtained the tenant's written authorization pursuant to section 38(4)(a) of the *Act* at the end of this tenancy to retain the security deposit for this tenancy. For these reasons and also in accordance with section 72 of the *Act*, I allow the landlord to retain the security deposit for this tenancy, plus applicable interest, in order to partially offset the monetary award issued in this decision. No interest is payable over this period.

As the landlord has been successful in this application, I allow the landlord to recover her \$50.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and utilities, the costs associated with removing material from the rental unit and for the landlord's filing fee, and to retain the tenants' security deposit:

Item	Amount
Unpaid January 2014 Rent	\$950.00
N.S.F. Cheque Fee	50.00
Unpaid Utilities (\$29.26 + 43.92 + \$62.40 + \$109.50 + \$60.15 + \$78.92 = \$384.15)	384.15
Removal of Garbage and Furniture	524.66
Less Security Deposit	-712.50
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,246.31</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 17, 2014

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Residential Tenancy Branch

