



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant both attended the hearing and gave affirmed testimony, and the landlord called one witness who also gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness 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.

At the commencement of the hearing, the parties agreed that the landlord will have an Order of Possession effective tomorrow, January 29, 2015 at 1:00 p.m. and the tenancy will end at that time.

### 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?
- Should the landlord be permitted to keep all or part of the security deposit in partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this fixed term tenancy began on October 15, 2014 and expired on January 15, 2015. The tenant still resides in the rental unit, although the

tenancy agreement, a copy of which has been provided, specifies that at the end of the fixed term, the tenant must move out of the rental unit.

Rent in the amount of \$850.00 per month is payable on the 1<sup>st</sup> day of each month, and the tenant has not paid any rent for January, 2015. No other rental arrears exist. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 2, 2015. A copy of the notice has been provided and it is dated January 2, 2015 and contains an effective date of vacancy of January 13, 2015 for unpaid rent in the amount of \$425.00, which has been crossed off and \$850.00 added, that was due on January 1, 2015. The landlord testified that upon speaking to someone at the Residential Tenancy Branch, the landlord was advised to change the amount but was not advised to serve the tenant with the amended document, and it was not served on the tenant.

The landlord has not collected any rent since the issuance of the notice and the landlord has not been served with an Application for Dispute Resolution by the tenant disputing the notice.

The landlord claims \$850.00 from the tenant and an order permitting the landlord to keep the security deposit in partial satisfaction of the claim and recovery of the \$50.00 filing fee.

The landlord's witness is the spouse of the landlord and testified that the rental unit is a basement suite in the landlord's home. The witness works out of town and returned home earlier than planned because the landlord was afraid of the tenant. He stated that it's been a difficult tenancy which has included police involvement.

The tenant testified that he paid rent on December 15, 2014 in the amount of \$850.00 and did not notice that the tenancy agreement shows that rent is payable on the 1<sup>st</sup> day of each month. The tenant moved in on the 15<sup>th</sup> of the month and paid a full month's rent as well as the security deposit of \$425.00. The tenant also paid rent on December 15, 2014 which covers to the 15<sup>th</sup> of January, 2015. The landlord gave the tenant receipts for those amounts but has not provided any receipts since. The tenant pays rent in cash. The tenant agrees that he owes rent for the last 2 weeks of January, 2015 but the landlord lacks integrity and the tenant didn't believe he would get back his security deposit. The tenant agrees that the landlord should keep the security deposit in full satisfaction of the landlord's claim.

The tenant further testified that the parties had a verbal agreement that the tenancy would continue on a month-to-month basis and the tenant told the landlord he was looking for a bigger place to rent. Then on January 3, 2015 the landlord told the tenant the tenancy would not be renewed and the tenant didn't have any time to look for another place to live. The tenant spoke to the landlord's spouse who agreed that the tenant could stay till the end of January, 2015 and the landlord would keep the security deposit. The tenant also agreed that he would move out a few days early to accommodate new tenants.

The tenant also denies that there has been any police involvement. The tenant found a policeman's card in the door but upon speaking to the police, the tenant has learned that the police have never heard of the landlord.

### Analysis

Firstly, where a landlord amends a document that is required to be served or given to a tenant, the amended document is not enforceable unless it is given to the tenant. I accept the testimony of the landlord that the Residential tenancy Branch advised the landlord to change the amount of rent due on the notice to end the tenancy, but I believe the landlord either didn't ask or didn't understand that it needed to be served.

I have reviewed the evidentiary material of the landlord, and nowhere in that material is there a copy of a receipt for the security deposit or any rent payments, nor is there any tenant ledger or any other evidence that supports the landlord's claim. The tenant testified that he paid a full month's rent each month commencing with the beginning of the tenancy as well as the security deposit. In the circumstances, I am satisfied that the landlord is owed half a month's rent and is entitled to keep the security deposit in full satisfaction of the claim.

Since the landlord has been successful with the application, the landlord is entitled to recovery of the filing fee for the cost of the application. The parties have agreed that the tenant will move out 2 days early to accommodate new tenants, and as a result of the tenant's agreement to move early, I find that the landlord has in effect recovered the filing fee.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective January 29, 2015 at 1:00 p.m., by consent.

I hereby order the landlord to keep the \$425.00 security deposit in full satisfaction of the landlord's claim for unpaid rent.

This order is final and binding 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: January 28, 2015

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Residential Tenancy Branch

