



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding West Bay Management Ltd.

and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords 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 named landlord attended the hearing and represented the landlord company, however no one for the tenant attended. The landlord advised that the hearing package was served on the tenant on December 26, 2014 by posting the documents to the door of the rental unit. The *Residential Tenancy Act* does not permit that method of service unless the landlord's application is solely for an Order of Possession, and the hearing was adjourned to a date and time specific, and the landlord was ordered to serve the tenant with the new hearing package.

The landlord attended on the second scheduled date, however due to a systemic error, the hearing did not convene until a later date. Again, the landlord and a witness for the landlords attended and both gave affirmed testimony, however no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participants who joined the call were the landlord and the landlord's witness. The landlord testified that the Notice of Reconvened Hearing and the Landlord's Application for Dispute Resolution were served to the tenant on January 22, 2015 by registered mail and has provided a copy of the Canada Post receipt. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the application for an Order of Possession.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late fees?
- Should the landlords be permitted to keep all or part of the security deposit in partial satisfaction of the claim?

### Background and Evidence

The landlords' witness testified that he is the property manager of the rental unit. This fixed term tenancy began on June 1, 2006 and expired on May 31, 2007 and then reverted to a month-to-month tenancy. The tenant moved out sometime near the end of January, 2015. Rent in the amount of \$550.00 per month was payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$275.00 which is still held in trust by the landlords, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlords' witness further testified that there have been previous disputes between the parties with respect to the tenancy, and orders have been made including a finding that the rental amount is \$550.00 per month, however, the landlord was granted an Order of Possession which was received on January 27, 2015. The tenant is in arrears of rent \$550.00 for December, 2014 and \$550.00 for January, 2015, and no orders have been made with respect to unpaid rent for either of those months. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and has provided a copy. The notice is dated December 11, 2014 with an expected date of vacancy of December 23, 2014 for unpaid rent in the amount of \$550.00 that was due on December 1, 2014. The tenant never paid the rent and the landlords claim \$1,100.00 for unpaid rent.

The landlords' witness further testified that the tenant left the rental unit in a mess, and by the time the landlords received the Order of Possession, the landlords could not have re-rented the rental unit for February 1, 2015. The landlords keep a monthly

running advertisement in a local newspaper, however it has not yet been re-rented. The landlords claim loss of revenue for February, 2015 in the amount of \$550.00.

The landlords paid \$530.00 for cleaning after the tenant moved out, as well as other damages left in the rental unit, for which the landlords seek compensation.

The tenancy agreement also provides for a late fee: "...The Tenant agrees to pay a late collection fee of \$5.00 per day for payments of rent received after the first day of each month, and a fee of \$25.00 per cheques returned." The landlords claim \$100.00 rather than \$5.00 per day.

The landlord testified that he does not know when the tenant left. The keys to the rental unit were located in the landlords' mailbox which is how the landlord was advised.

The landlord further testified that Arbitrators from previous hearings ordered the tenant to pay rent and the tenant kept ignoring the orders. At the last hearing, the tenant said he had a money order to pay the rent and that he would pay at the end of the hearing, but he didn't pay.

The landlord further testified that the tenant left the rental unit in a mess and hoped to claim damages at this hearing.

The landlord has been granted an Order of Possession, and seeks an order for the unpaid rent, late fees and loss of revenue.

### Analysis

I have reviewed the documentary evidence provided by the landlords and I accept the testimony of the landlords' witness that none of the previous hearings dealt with unpaid rent for the months of December, 2014 or January, 2015. I also accept the testimony that a previous arbitration resulted in rent being established at \$550.00 per month. In the circumstances, I am satisfied that the tenant owes the landlord \$550.00 for December, 2014 and \$550.00 for January, 2015, for a total of \$1,100.00.

With respect to late fees, the regulations permit a landlord to collect a maximum of \$25.00 per late rent payment if a clause for late payments is contained in the tenancy agreement. In this case, the tenant agreed to late fees of a higher amount, and I am satisfied that the landlords are entitled to \$50.00.

With respect to loss of revenue, I accept that the landlords did not receive the Order of Possession to serve on the tenant until January 27, 2015. If the landlord had served it that date, and if the tenant had complied, the landlords would have to advertise the

rental unit for rent and prepare it for showing. The landlords did so by way of a running advertisement. I am satisfied that the landlords could not have re-rented the rental unit prior to the middle of February, 2015, but I have no testimony or evidence to satisfy me that it could not have been rented 2 weeks after the tenant moved out. I therefore grant half a month's rent, or \$275.00.

With respect to damages to the rental unit, the landlords have not made that application and therefore have not put the tenant on notice of such a claim, and I cannot adjudicate upon it. The landlords are at liberty to make an application for damage to the unit, site or property.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

I order the landlords to keep the \$275.00 security deposit and I grant a monetary order in favour of the landlords for the difference in the amount of \$1,200.00.

### Conclusion

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

I hereby order the landlords to keep the \$275.00 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,200.00.

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: February 20, 2015

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Residential Tenancy Branch

