



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on various reasons; including: unpaid rent; cause; and a breach of an agreement. The Landlord also sought a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the Landlord advised that the Tenants vacated the rental unit as of March 13, 2015; accordingly, an Order of Possession was not required and as such, the Landlord's claims in this regard are dismissed.

### Issues to be Decided

Is the Landlord entitled to monetary relief?

### Background and Evidence

Introduced in evidence was a copy of the "Rental Lease Agreement" and which indicated the following: the tenancy began November 24, 2014 for a fixed one year

term; the Tenants agreed to pay \$900.00 per month on the first of every month; the Tenants also agreed to pay a security deposit of \$450.00 and a pet damage deposit of \$225.00.

The parties participated in another Residential Tenancy dispute resolution hearing on March 12, 2015. The Landlord testified that at this hearing the Tenants confirmed they had moved out. According to the Landlord, despite assuring the Arbitrator they had moved out, the Tenants returned to the rental unit on March 13, 2015 and were escorted away from the rental unit by the police.

When I asked the Tenants when they vacated the rental unit, the Tenants initially testified that they "acquired their new residence on March 1, 2015". When I asked why they were at the rental unit on March 13, 2015, the Tenants claimed that the presiding Arbitrator at the March 12, 2015 hearing told them they could return to the rental unit to retrieve a table on March 13, 2015. According to the Tenants, they returned on March 13, 2015 to retrieve their table and provide the keys to the rental unit.

The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities wherein they claimed the amount of \$225.00 was owing as of February 1, 2015. The 10 Day Notice was undated. As the Tenants moved out, the validity of the 10 Day Notice was not at issue.

In the within hearing, the Landlord sought the sum of \$225.00 for rental arrears owing as of February 1, 2015, in addition to the sum of \$900.00 for rent for March 2015 on the basis that the Tenants had not yet fully moved out of the rental unit.

The Landlord also submitted in evidence a document which they titled "Monetary Order". On this document was the following notation: "Also promised to reimburse incurred expenses of \$90.00 due to their inability to follow through with commitment & responsibility". When asked to clarify this amount, the Landlord stated it was for bank fees she incurred; that said, she did not submit copies of receipts for these alleged bank fees.

The Landlord also sought recovery of the \$50.00 fee she paid to file her application and to retain the security deposit and the pet damage deposit in partial satisfaction of the amounts owing.

The Tenants testified that the sum of \$225.00 was actually the pet damage deposit, which they refused to pay because they say they had problems with rats. They also confirmed they did not pay rent for March 2015, claiming they had already moved out.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find it unusual that an Arbitrator would give a Tenant permission to return to the rental unit and not record that in their decision. In any case, while the parties disagree on when the Tenants vacated the rental unit, it is clear, based on the fact the Tenants returned to the rental unit on March 13, 2015, that the rental unit was not ready to be rented until at least that date. Accordingly, I find that the Tenants are responsible for paying \$900.00 for rent for the month of March 2015.

As well, although the parties disagree as to whether the \$225.00 claimed by the Landlord was arrears of rent or the pet damage deposit, I accept the evidence of the Landlord that as of February 1, 2015 the sum of \$225.00 was also owed.

I decline the Landlord's request for compensation for \$90.00 for bank fees as there was insufficient evidence to support such a claim.

The Landlord, having been substantially successful, is entitled to recover the \$50.00 paid to file their application.

Accordingly, I find that the Landlord has established a total monetary claim of \$1,175.00 comprised of \$1,125.00 in rental arrears and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$450.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$725.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Tenants provided their forwarding address during the hearing; as such I direct the Landlord to either make an application to retain the pet damage deposit, or return it to the Tenants within 15 days of receipt of this my decision. For clarity, I deem the decision received five days after the date of the decision.

### Conclusion

The Landlord is entitled to monetary compensation for the \$225.00 in rent owing as of February 1, 2015, the \$900.00 in rent for March 2015, as well as the \$50.00 filing fee for a total of \$1,175.00. The Landlord may keep the security deposit of \$450.00 in partial satisfaction of the monetary claim, and is granted a monetary order for the balance due in the amount of **\$725.00**.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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: May 11, 2015

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Residential Tenancy Branch

