



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Despite having been personally served with the application for dispute resolution and notice of hearing on November 26, 2015, the tenants did not participate in the conference call hearing. As I was satisfied that the tenants had notice of the claim against them, the hearing proceeded in their absence.

I note that the tenants had filed their own claim disputing the notice to end tenancy, but withdrew that claim by contacting the Residential Tenancy Branch via telephone shortly before the hearing began.

### Issues to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The landlord's undisputed evidence is as follows. The tenancy began on June 1, 2015. Rent was set at \$1,150.00 per month and included utilities. The tenancy agreement did not impose any restrictions on the tenants regarding the use of utilities. The landlord collected a \$575.00 security deposit from the tenants at the outset of the tenancy.

The tenants failed to pay rent in the month of December and the landlord seeks to recover those rental arrears.

The landlord also seeks to recover monies representing what she characterized as the tenants' excessive use of hydro. The landlord testified that the tenants' friend parked a trailer in the driveway and was using hydro from the kitchen of the rental unit. The landlord estimated that the hydro for this year was approximately \$106.00 higher than the year before.

The landlord seeks to recover the cost of repairing plumbing in the bathroom of the rental unit. She testified that there was a leak in the pipe and provided a copy of a plumber's statement in which the plumber noted that they could not determine whether the leak was caused by wear or was done intentionally.

The landlord seeks to recover the cost of repairing a window sill and siding. She testified that the tenant smoked in the suite and extinguished his cigarettes on the window sill, causing damage. She stated that the ashes from the cigarettes also damaged the siding. The landlord did not provide a professional estimate, but claims that it will cost her \$600.00 to repair the damage.

The landlord testified that she served a one month notice to end tenancy on the tenants on November 12. She testified that the tenants have vacated the rental unit, but the trailer belonging to their friend is still parked in the driveway of the unit and she asked for an order of possession which will permit her to remove the trailer.

The landlord also seeks to recover the cost of the filing fee.

### Analysis

I find that the tenants were contractually obligated to pay rent in the month of December and that they failed to do so. I find that the landlord is entitled to recover those arrears and I award the landlord \$1,150.00.

I dismiss the landlord's claim for the extra cost of hydro. The tenancy agreement does not prohibit the tenants from using hydro for a travel trailer and I find that in the absence of such a prohibition, the tenants have acted reasonably and have not breached the Act or tenancy agreement.

I dismiss the landlord's claim for the cost of repairing the plumbing in the bathroom. In order to recover that cost, the landlord must prove that the tenants either purposely or negligently caused the leak and that it was not caused by reasonable wear and tear. The plumber was unable to determine the cause of the leak and I find there is insufficient evidence to show that it was caused by the tenants' intentional or negligent actions.

I also dismiss the landlord's claim for damage to the window sill and siding. The landlord submitted faxed photographs which show indistinguishable images and the landlord failed to provide a professional estimate showing the cost of the repair. In order to succeed in this claim, the landlord must not only prove that the damage exists,

but provide evidence of the amount of the loss. I find that she has not met either burden.

If the tenants have vacated the unit, the landlord does not require an order of possession. However, because it is possible that the tenants have an ownership interest in the trailer which remains parked in the driveway of the rental unit, I find it appropriate to grant the landlord an order of possession. The order is granted on the basis of the notice to end tenancy which was undisputed as the tenants' withdrew their claim. Section 47(5) of the Act provides that when tenants do not dispute a notice to end tenancy, they are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I find that the landlord is entitled to an order of possession and I grant her that order. The order must be served on the tenants, not on the friend parked in the driveway of the rental unit. If the tenants fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

If the tenants do not have an ownership interest in the trailer parked in the driveway, the trailer falls outside the jurisdiction of the Act and the landlord may use any legal means to remove the trailer which is not authorized to remain on her property.

As the landlord has been partially successful in her claim, I find she should recover her \$50.00 filing fee and I award her \$50.00 for a total award of \$1,200.00. I order the landlord to retain the \$575.00 security deposit in partial satisfaction of the claim and I grant her a monetary order for the balance of \$625.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$625.00. The landlord will retain the security deposit.

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 15, 2016

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Residential Tenancy Branch

