



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF  
                                 CNR, O

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied 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 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 tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite making an application for dispute resolution that was scheduled to be heard jointly with the landlord's application today at 9:30 a.m., and despite being served with the landlord's application for dispute resolution, no one for the tenant appeared. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the landlord. The landlord testified that the Landlord's Application for Dispute Resolution and notice of this hearing was served upon the tenant by registered mail on January 21, 2016 and has provided a copy of a Registered Domestic Customer Receipt addressed to the tenant and stamped with that date by Canada Post. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The testimony of the landlord and the evidentiary material provided are considered in this Decision.

Since the tenant has not attended the hearing, the tenant's application is hereby dismissed without leave to reapply.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord 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 liquidated damages?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this fixed-term tenancy began on August 1, 2015 and expires on August 1, 2016. The tenant still resides in the rental unit. Rent in the amount of \$1,275.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$625.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a condominium in a complex containing 6 units. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenant failed to pay rent in January, 2016 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on January 7, 2016. A copy of the notice has been provided and it is dated January 7, 2016 and contains an effective date of vacancy of January 18, 2016 for unpaid rent in the amount of \$1,275.00 that was due on January 1, 2016. The tenant has not paid any rent since the notice was issued and is now in arrears the sum of \$3,825.00 for January, February and March, 2016.

The tenancy agreement also contains a “liquidated damages” clause which states as follows: “66. If the Tenant moves out prior to the natural expiration of this Lease, a rerent levy of \$2,550.00 will be charged to the Tenant.” The landlord claims that amount as well as the unpaid rent from the tenant.

### Analysis

The *Residential Tenancy Act* states that where a tenant disputes a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord if I uphold the notice or dismiss the tenant’s application, so long as the notice is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid

Rent or Utilities dated January 7, 2016 and I find that it is in the approved form and contains information required by the *Act*. Having dismissed the tenant's application, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I accept the undisputed testimony of the landlord that the tenant hasn't paid any rent for 2016, and I find that the landlord is entitled to monetary compensation in the amount of \$2,550.00 for January and February, 2016 rent. With respect to unpaid rent for March, 2016, a party who makes a claim against another party must do what is reasonable to mitigate any loss suffered. Today is March 3, 2016, and although I am not entirely satisfied that the landlord won't be able to re-rent before April 1, 2016, any notice that the tenant may give the landlord would not take effect until March 31, 2016 in any event, and therefore, I grant a monetary order in favour of the landlord for March's rent.

With respect to the landlord's claim for liquidated damages, the *Act* states that a tenancy agreement may not contain terms that are unconscionable, and no orders can be made that act as a penalty. Liquidated damages must be a genuine pre-estimate at the time the agreement was entered into of the costs the landlord would incur to re-rent. I refer to Residential Tenancy Policy Guideline #4 – Liquidated Damages, which states:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.

I find that double the monthly rent is not a genuine pre-estimate of such costs and is extravagant in comparison to any loss. However, in the event that the landlord incurs loss of rental revenue as a result of the tenant's failure to comply with the Order of Possession or the *Act*, the landlord will be at liberty to apply for such monetary compensation.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$625.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$3,300.00.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$625.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,300.00.

These orders are 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: March 03, 2016

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Residential Tenancy Branch