



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated February 3, 2016 to be effective March 14, 2016 and of the Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant vacated on March 30, 2016 so the landlord no longer applies for an Order of Possession. The landlord applies now pursuant to the *Residential Tenancy Act* (the Act) for a monetary order pursuant to Sections 46 and 67 for unpaid rent and utilities, to retain the security deposit pursuant to Section 38; and to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that rent and utilities are owed and they are entitled to a monetary order for rental and utility arrears and to recover the filing fee for this application? Are they entitled to retain the security deposit to offset the amount owing?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced May 15, 2015 for a fixed term to expire in May 14, 2016. Rent was \$1850 payable on the 15<sup>th</sup> of each month and a security deposit of \$925 was paid on March 15, 2015. It is undisputed that the tenant did not pay rent for January to March 2016 and vacated on March 30, 2016. The landlord said the home was sold with possession of April 1, 2016. The landlord requests recovery of unpaid rent for January, February and March 2016 (\$1850x3) plus \$75 in late fees (\$25x3) and recovery of unpaid utility bills of \$490.20 and \$253.97. He also requests retention of \$50 of the security deposit for damages; the tenant agreed to pay this amount on the condition inspection report for repairs of minor damage.

The tenant agreed he owed these amounts. However, rent is due on the 15<sup>th</sup> of the month and he only over held the home for 16 days in March as the new owner took possession on April 1, 2016. The parties agreed that there should be an adjustment to the over holding rent claimed for March.

In evidence is the Notice to End Tenancy for unpaid rent, notes from the parties regarding the move-out date, the condition inspection report, notes from the City regarding unpaid utilities being added to the tax bill, the tenancy agreement and addendums on which the late payment fee of \$25 is noted..

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Monetary Order:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that there is unpaid rent and utilities as it is well supported by the documentary evidence and the tenant's acknowledgement. However, as the tenant only over held for 16 days in March and the new owners took possession as of April 1, 2016, I find the rent claim for March should be adjusted to \$954.83 ( $1850/31 \times 16$ ) plus \$25 late fee.

I find the landlord entitled to a monetary order for \$5524 ( $\$1850(\text{Jan}) + 1850(\text{Feb.}) + 954.83(\text{March}) + 75 \text{ late fees (3 months)} + 490.20 \text{ and } 253.97 \text{ for utilities and } \$50 \text{ compensation as agreed for damages}$ ). I find the landlord entitled to retain the security deposit of \$925 to offset the amount owing.

### **Conclusion:**

The landlord no longer requires an Order of Possession. I find him entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find him entitled to recover his filing fee for this application.

#### **Calculation of Monetary Award:**

Arrears & over holding rent	4654.83
Late fees	75.00
Utilities	744.17
Agreed damage compensation	50.00
Filing fee	100.00
Less security deposit (no interest 2015-16)	-925.00

<b>Total Monetary Order to Landlord</b>	<b>4699.00</b>
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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: April 14, 2016

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Residential Tenancy Branch