



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, MNSD, MNDC, FF, O

### Introduction

This hearing addressed the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for breach of an agreement with the landlord, pursuant to section 55;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant, landlord and landlords' agent SP ("landlord SP") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlords' application ("Application") for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the Application.

### Issue(s) to be Decided

Are the landlords entitled to an order of possession for breach of an agreement with the landlord?

Are the landlords authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords authorized to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlords testified that they rented the upstairs unit of a house and with the permission of their landlord they sublet the lower two bedroom rental unit to the tenant. The landlord testified that this tenancy began on September 1, 2015 on a fixed term until April 30, 2016. The landlords have submitted a copy of the tenancy agreement with signatures and initials signifying at the end of the fixed term the tenancy ends and the tenant must move out of the rental unit. According to the tenancy agreement rent in the amount of \$700.00 was payable on the first of each month. The tenant remitted \$350.00 for the security deposit and \$350.00 for the pet deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlords seek monetary compensation in the amount of \$966.00 for unpaid rent from May 1, 2016 to June 15, 2016. The landlords calculated a daily rent rate of \$21.00 multiplied by 46 days of occupancy to reach the \$966.00 figure. The landlord claimed that the tenant has not paid any rent for the above 46 days. The landlord testified that the tenant is responsible for 1/5 of the gas bill as per the signed addendum to the tenancy agreement. The landlords have not submitted copies of the gas bills but have submitted a copy of the addendum. The landlords seek compensation in the amount of \$92.00 for the gas from May 1, 2016 to June 15, 2016. The landlords calculated gas usage as \$2.00 per day for 46 days to arrive at the \$92.00 amount.

The landlords seek \$100.00 in damages, specifically to cover the anticipated cleaning costs. The landlords acknowledged they have not been in the rental unit to assess the cleaning that may be required.

The landlords seek to recover the \$100.00 filing fee for this Application from the tenants.

Although the tenant acknowledged that the signed tenancy agreement indicates \$700.00 as the rent amount, he contended that the parties came to a new agreement after another renter moved into the second bedroom of the two bedroom rental unit he occupied. The tenant testified that the parties verbally agreed that effective January 1, 2016 rent would be reduced by \$50.00 making it \$650.00 per month. It is the tenant's position that this effectively became a new tenancy agreement making the fixed term tenancy null and void. The tenant acknowledged that he has not paid rent from May to June 2016. The tenant did not dispute the agreement to pay gas but stated that he had never seen a gas bill to determine his appropriate portion.

The landlords agreed they had a verbal agreement to reduce the rent effective January 1, 2016. The landlords testified that they did not complete a new written tenancy agreement at that time.

### Analysis

Section 44 of the *Act* establishes that a tenancy may end if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Although the tenant argued a new tenancy agreement was created based on the reduction of rent, I do not find this to be accurate. The tenant and landlords agreed in writing that the tenancy would end April 30, 2016. The reduction of rent does not negate the validity of the existing signed tenancy agreement nor is it evidence that the tenancy was to continue past April 30, 2016. I find the parties simply varied the term of the tenancy agreement dealing with the amount of rent. This does not end the tenancy agreement as required under section 44 of the *Act*. For these reasons, I find the landlords were entitled to possession of the rental unit on April 30, 2016 and as this has not occurred, the landlords are entitled to a two day order of possession for the rental unit.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlords proved that the current rent for this unit is \$650.00. I find the landlords provided undisputed evidence that the tenant failed to pay full rent from May 1 to June 15, 2016. Therefore, I find that the landlords are entitled to \$966.00 in rent based on the prorated daily rate of \$21.00. Because the landlords failed to provide copies of the gas bills I dismiss this portion of the landlords' claim with leave to reapply.

I find the claim to damages premature as the tenant had not vacated the rental unit at the time the Application was made. Because it was premature, the landlords have not presented evidence in the form of invoices or work orders. For these reasons I dismiss the landlords' application for damages with leave to reapply. Therefore, I find that the landlords are not entitled to any compensation other than outstanding rent in the amount of \$966.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security and pet deposit in the total amount of \$600.00 in partial satisfaction of the monetary award for the balance due of \$366.00.

As the landlords were successful in this Application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the Application, for a total award of \$466.00

### Conclusion

The landlords' application for an order of possession is granted.

I issue a monetary order in the landlord's favour in the amount of \$466.00 against the tenant.

The landlord's application for a monetary order for utilities in the form of gas payments is dismissed with leave to reapply.

The landlords' application for damages is dismissed with leave to reapply.

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: June 14, 2016

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Residential Tenancy Branch