



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; 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 landlord attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that he personally served the tenant with the Landlord Application for Dispute Resolution and notice of this hearing on January 26, 2017. I accept that testimony, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

### 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 damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this tenancy began as a fixed term for 1 year on September 1, 2015 and then reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$700.00 per month is payable on the last day of each

month in advance for the following month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 as well as a pet damage deposit in the amount of \$350.00, both of which are still held in trust by the landlord. The rental unit is a suite within the landlord's home.

The landlord further testified that the tenant failed to pay rent when it was due for the month of December, 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 December 2, 2016. A copy has been provided. It is dated December 2, 2016 and contains an effective date of vacancy of December 12, 2016 for unpaid rent in the amount of \$700.00 that was due on November 30, 2016. The tenant paid half of the rent owing on December 9, 2016 and promised the balance but didn't pay it.

The tenant paid no rent for January, 2017 and the landlord served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 9, 2017 by posting it to the door of the rental unit. A copy of that notice has also been provided and it is dated January 9, 2017 and contains an effective date of vacancy of January 19, 2017 for unpaid rent in the amount of \$1,050.00 that was due on December 30, 2016. The tenant has not paid any rent since and is now in arrears of rent \$350.00 for December, 2016 as well as \$700.00 for each of January and February, 2017.

With respect to damages, the landlord testified that a wall in the rental unit is damaged, but does not yet know the cost to repair.

The landlord claims \$2,100.00 as against the tenant, recovery of the \$100.00 filing fee and an order permitting the landlord to keep the \$350.00 security deposit and the \$350.00 pet damage deposit in partial satisfaction.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant fails to do either, the tenant is conclusively presumed to have ended the tenancy. In this case, I accept the undisputed testimony of the landlord that the tenant has not paid the rent in full or disputed either notice. I also accept the undisputed testimony of the landlord that the first notice was served on December 2, 2016 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or December 5, 2016. The tenant paid a portion of the rent but not all of it. The second notice is deemed to have been served 3 days after posting it, or January 12, 2017. I accept the testimony of the landlord that the tenant has not paid the rent in full and has not served the landlord with an application for dispute resolution disputing

the notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession. Since the effective date of vacancy of both notices has passed, I grant the Order of Possession on 2 days notice to the tenant.

I further find that the landlord has established the claim of unpaid rent in the amount of \$350.00 for December, 2016 as well as \$700.00 for January and \$700.00 for February, 2017.

With respect to the landlord's claim for damages, the tenant is required to repair any damage caused by the tenant, and since the tenancy has not yet ended, I find the application to be premature and I dismiss it with leave to reapply.

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

I order the landlord to keep the \$350.00 security deposit in partial satisfaction of the claim.

With respect to the pet damage deposit, the *Residential Tenancy Act* only permits a landlord to keep a pet damage deposit for damages caused by a tenant's pet unless the tenant agrees in writing or if ordered by an Arbitrator after the tenancy ends.

**38** (3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

In this case, the tenant has not agreed in writing and the tenancy has not ended. Having dismissed the landlord's application for monetary compensation for damage to

the rental unit, I also dismiss the landlord's application for an order permitting the landlord to keep the \$350.00 pet damage deposit with leave to reapply.

### Conclusion

For the reasons set out above, 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 \$350.00 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 \$1,500.00.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

The landlord's application for an order permitting the landlord to keep the \$350.00 pet damage deposit is hereby dismissed with leave to reapply.

This order is 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: February 21, 2017

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Residential Tenancy Branch