



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPC, MNDC, FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$600
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenants as they have acknowledged receipt of the documents. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on February 1, 2016. The rent is \$1200 per month payable on the first day of each month. The tenant paid a security deposit of \$600 at the start of the tenancy.

The landlord has obtained an Order of Possession effective May 31, 2017 in another application.

### Analysis - Order of Possession:

It is no longer necessary for me to consider the landlord's application for an Order of Possession.

Analysis - Monetary Order and Cost of Filing fee:

The landlord seeks compensation in the sum of \$600 for the additional hydro costs incurred to house the tenant's two lizards for the 15 months of the tenancy.

The landlord testified as follows:

- The tenants were deceptive and failed to advise the landlord at the time they entered into the tenancy agreement and when they moved in that they had two pet lizards.
- The tenancy agreement is in the standard form and contains a "No Pets" clause.
- The rental unit is energy efficient.
- The landlord produced a summary from the hydro that includes the following:

Date	Consumption	Daily Average	Cost
○ Feb. 5, 2016	1657	28	\$156.58
○ April 6, 2016	2450	39	\$249.49
○ June 7, 2016	2635	44	\$283.39
○ August 8, 2016	2722	44	\$292.76
○ Oct 6, 2016	2582	44	\$277.58
○ Dec. 7, 2016	2790	45	\$301.21
○ Feb. 7, 2017	2666	43	\$286.80
○ April 7, 2017	2316	39	\$245.53

- The rental unit was new. The tenants took possession on February 1, 2016. The hydro records indicate a cost of \$156.58 for period prior to the tenants taking possession. Since they took possession the cost has increased \$100 to \$150 per billing period. .
- The blames much of this increase was the lamps etc. used by the tenants for their two lizards. The landlord also referred to a drop in the charges in 2017 after one of the pet lizards had died.
- The landlord testified the female tenant told her they paid \$25 per month for each lizard to their previous landlord.

The tenants testified as follows:

- The Craigslist advertisement listed the rent at \$1000 washer and dryer available for an additional price.. They agreed to pay \$1200 per month to compensate the landlord for any additional cost that might be incurred for the pets and for the installation of an in suite washer and dryer.
- Hydro is included with the rent
- The landlord was aware of the lizards at all times and did not object.
- The amount claimed by the landlord for additional hydro costs is unreasonable.
- The tenants deny they paid an additional sum to their previous landlord.

Policy Guideline #16 includes the following:

## 16. Compensation for Damage or Loss

### C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

....

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

#### Analysis:

The written tenancy agreement provided that hydro is included with the rent. However, the tenants breached the “No pets” provision in the tenancy agreement. I do not accept the testimony of the tenants that the additional rent increase from \$1000 to \$1200 was partially to compensate for the pet lizards. The landlord denies this. If this had occurred one would have expected that the landlord would require a pet damage deposit. Such a deposit was not included. Further, one would have expected that the tenants would have required the tenancy agreement to indicate the pets were permitted.

However, I determined the landlord has failed to prove the amount or quantum of the loss. The evidence produced by the landlord shows the hydro increase of \$100 to \$150 per hydro billing period after the tenants took possession. However, this is not surprising as tenants are now living in the rental unit. The landlord failed to present sufficient proof to show the hydro increases were caused by the presence of the pet lizards.

However, I determined the landlord is entitled to nominal damages in the sum of \$100.

#### Monetary Order:

I order that the Tenants pay to the Landlord the sum of \$100 plus \$50 for the cost of the filing fee (reduced to show the limited success of the landlord for a total of \$150).

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on both parties.**

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: May 30, 2017

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Residential Tenancy Branch