



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPL, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and Landlord's use of property pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was primarily represented by the new property owner, JJ (the "landlord").

As both parties were in attendance I confirmed service of the landlord's Notices to End Tenancy and application for dispute resolution. The tenant confirmed receipt of the landlord's Notices and application package. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with copies of the landlord's notice to end tenancy, and dispute resolution package.

At the outset of the hearing, the parties testified that the tenant has vacated the rental unit and an Order of Possession is no longer being sought. The portion of the landlord's application seeking an Order of Possession is withdrawn.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in October, 2016. The monthly rent is \$980.00 payable on the first of each month. A security deposit of \$490.00 was paid by the tenant at the start of the tenancy and is still held by the landlord.

The tenant testified that she paid an additional \$490.00 for a pet damage deposit during the initial months of the tenancy. The tenant said that the deposit was paid in cash and no receipt was provided by the landlord. The tenant provided detailed recollection of how she paid the security deposit at the start of the tenancy and subsequently paid the pet damage deposit. The landlord testified that they have no recollection or records of a pet damage deposit ever being paid.

The landlord said that a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") was issued on March 31, 2017 as the landlord was in the process of putting the property up for sale. The landlord said that pursuant to the tenant's right for compensation, no rent was collected for May, 2017. The parties testified that the tenant did not vacate the rental unit on May 31, 2017 as required under the 2 Month Notice and occupied the rental unit until early July, 2017. The landlord said that they believe the tenant overholding negates their obligation to provide compensation and are seeking rent for the months of May and June, 2017 in the amount of \$1,960.00.

The tenant confirmed that no rent was paid for May or June, 2017. The tenant said that pursuant to the 2 Month Notice there is no obligation to pay the May rent. The tenant said that she made arrangements with the landlord that the security deposit and pet damage deposit would be applied against the June rent. The tenant said that there was an oral agreement with the landlord and no written records of this arrangement was created.

### Analysis

Given the conflicting testimony regarding the pet damage deposit and the payment of June rent I must first turn to a determination of credibility. Neither party submitted any written evidence in support of their respective position. I have considered the testimonies of the parties, their content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

Considered in its totality, I find the tenant's version of events to be more credible than that of the landlord. I accept the tenant's evidence that she paid both a security deposit

of \$490.00 as well as a pet damage deposit of \$490.00. The tenant was able to provide detailed recollection of the circumstances and the dates when the deposits were paid. The tenant testified that all payments to the landlord have been made in cash and that the landlord failed to issue any receipts for the payments. I accept the tenant's evidence that she paid a security deposit and pet damage deposit in the amount of \$490.00 each and those amounts are still held by the landlord. I find that the total deposits held by the landlord for this tenancy is \$980.00.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Pursuant to section 51 of the *Act*, a tenant who receives a Notice to End Tenancy for landlord's use of property is entitled to receive the equivalent of one month's rent under the tenancy agreement. This entitlement is not contingent on the tenant vacating the rental unit on the effective date of the Notice. Therefore, I find that the landlord is not entitled to retroactively seek the rent for the month of May when the tenant was entitled to withhold the amount.

Pursuant to section 57 of the *Act*, a landlord may claim compensation from an overholding tenant. I accept the evidence of the parties that the tenant did not vacate the rental unit on the effective date of the 2 Month Notice, May 31, 2017. I accept the evidence that the tenant occupied the rental unit for June, 2017 and I find that the landlord is entitled to compensation from the tenant for one additional month's rent.

The tenant submitted that there was an agreement with the landlord that the tenant's security deposit and pet damage deposit in the respective amounts of \$490.00 was to be applied against the outstanding rent. However, section 21 of the *Act* states that, unless the landlord gives written consent, a tenant must not apply a security deposit or pet damage deposit as rent. The parties have testified that there is no written agreement or consent provided by the landlord. Consequently, I find that the tenant was obligated to pay the rent for the month of June, 2017 and failed to pay it in full. I find that the landlord is entitled to a monetary award in the amount of \$980.00 for June, 2017 rent.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$980.00 security deposit and pet damage deposit in satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was only partially successful I decline to issue an order allowing the landlord to recover the filing fee for their application from the tenant.

### Conclusion

The portion of the application seeking an Order of Possession is withdrawn.

The landlord is permitted to retain the security deposit and pet damage deposit for this tenancy under the following terms, which allows the landlord to recover unpaid rent:

Item	Amount
Unpaid Rent June, 2017	\$980.00
Less Security Deposit	-\$490.00
Less Pet Damage Deposit	-\$490.00
<b>Total Monetary Order</b>	<b>\$0</b>

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: July 17, 2017

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Residential Tenancy Branch