



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNDCT, FFT  
                             OPR-DR, MNR-DR, MNDCL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning amended applications made by the tenant and by the landlord.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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. The landlord's application was made by way of the Direct Request process which was referred to this participatory hearing.

Both parties attended the hearing, gave affirmed testimony and were given the opportunity to question each other and to give closing submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing, the parties agreed that the tenant has vacated the rental unit, and therefore, the tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is dismissed. Similarly, the landlord's application for an Order of Possession is also dismissed.

Further, during the course of the hearing, the landlord testified that the monetary compensation sought for keys and fob replacement is withdrawn, and I dismiss that portion of the landlord's application.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for return of all or part or double the amount of the security deposit?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the landlord's claim?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on September 1, 2021 and the tenant vacated the rental unit on October 17, 2021. Rent in the amount of \$1,650.00 was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy, the previous landlord collected a security deposit from the tenant in the amount of \$825.00, which has not been returned to the tenant. The rental unit is an apartment in a complex and a copy of the tenancy agreement has been provided by the tenant for this hearing.

The tenant provided the landlord with a forwarding address in writing on November 2, 2021 and a copy has been provided for this hearing.

The Addendum to the tenancy agreement contains a clause specifying that if the rental unit sold during the tenancy, the tenant may receive a notice to end the tenancy by the new owner and any terms for continued occupancy shall be by mutual consent of the tenant and the new owner. The previous landlord told the tenant verbally and by email that the new landlord was going to move in and the tenant would not have to pay the last month's rent. Copies of emails exchanged between the previous landlord and the tenant have been provided for this hearing.

Neither landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, however the tenant received a 10 Day Notice to End

Tenancy for Unpaid Rent or Utilities from the new owner, and a copy has been provided for this hearing. It is dated October 4, 2021 and contains an effective date of vacancy of October 14, 2021 for unpaid rent in the amount of \$1,650.00 that was due on October 1, 2021. The tenant did not pay the rent but vacated on October 17, 2021.

The landlord ought to make the claim as against the previous landlord because of promises made to the tenant. The previous landlord displayed negligence at the cost of the tenant. He most certainly verbally advised that the new owner was planning to move in on November 1, 2021 and the tenant was expected to be moved out prior to that. The tenant made plans accordingly.

**The landlord** testified that on October 31, 2021 the landlord received the keys and fobs back from the tenant. The landlord did not tell the tenant to move out, nor was the tenant served with a notice to end the tenancy for the landlord's use of the property; the tenant had an opportunity to stay as long as desired.

The \$825.00 security deposit has been provided to the landlord from the previous landlord in the statement of adjustments, and the current landlord still holds that amount in trust.

The Addendum to the Sale Agreement was issued on August 25, 2021 and the offer was accepted by the previous owner. Possession date was September 23, 2021 and the landlord would assume the tenant for rent in the amount of \$1,650.00. The landlord seeks only the rent for the month of October, 2021 in the amount of \$1,650.00.

The landlord has not re-rented, but moved into the rental unit on November 1, 2021 after receiving the keys from the tenant.

### Analysis

It is unfortunate that the previous landlord made assumptions that included the purchaser moving into the rental unit. If the purchaser or the seller had given the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property in the approved form, the tenant would not be required to pay the last months' rent. In this case, the tenant was not served with such a Notice, and therefore, rent is payable as set out in the tenancy agreement.

The parties agree that no rent was paid for October, 2021. Although the tenant didn't remain in the rental unit for the entire month, any notice that the tenant could legally have given would not have been effective before the end of October in any event.

Therefore, I find that the landlord has established a claim of 1 months' rent payable under the tenancy agreement, or \$1,650.00.

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

I dismiss the tenant's application for recovery of all or part or double the amount of the security deposit, and I order the landlord to keep the \$825.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$925.00.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

The landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed, as withdrawn.

I hereby order the landlord to keep the \$825.00 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 \$925.00.

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 18, 2022

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Residential Tenancy Branch