



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNR, MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications. The tenants made an application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) and recover the filing fee. The landlords made an application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and utilities, to retain the security deposit and recover the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

### Issue(s) to be Decided

1. Whether there grounds to cancel the Notice
2. Whether the landlord has established an entitlement to an Order of Possession and a Monetary Order for unpaid rent and utilities.
3. Whether the landlord is authorized to retain the tenants' security deposit.
4. Mutually agreeable terms to resolve this matter.
5. Award of the filing fee.

### Background and Evidence

I undisputed testimony that the tenants are required to pay rent of \$800.00 per month. The tenants paid a security deposit of \$400.00 in mid November 2008 and the tenants moved in to the rental unit on or about December 1, 2008. There is no written tenancy agreement. The tenants did not pay rent when due and on December 9, 2008 the landlord served the tenants with the Notice. The Notice had an effective date of

December 19, 2008 and indicated that rent of \$800.00 was in arrears as well as \$25.00 in utilities. The landlord served the tenants with another *10 Day Notice to End Tenancy for Unpaid Rent* on December 22, 2008.

The tenants claim that they tried to pay the landlord \$800.00 in cash on Friday, December 12, 2008 but the landlord refused the money and told the tenant that he just wanted the tenants to move out. The tenant then disputed the Notice on the following Monday, December 15, 2008.

The landlord raised issues of too many occupants in the rental unit, smoking in the unit and hooking up a washer and dryer during the hearing and indicated that he did want the tenants to move. The landlord denied that he refused to accept rent from the tenant on December 12, 2008.

During the hearing, I facilitated a mutual agreement between the parties. The tenant proposed that they would vacate the rental unit on January 18, 2009 and pay \$1,200.00 to the landlord on January 9, 2009 for December 2008 rent and one-half of January's rent, and authorize the landlord to retain the security deposit. The landlord accepted the tenant's offer.

The parties were in disagreement as to the requirement for the tenants to pay utilities.

### Analysis

I accept the mutual agreement reached between the parties and order that it be binding upon both parties. As a result, I order that the tenancy shall continue until January 18, 2009 at which time the tenants must vacate the rental unit. The landlord is provided an Order of Possession effective January 18, 2009. The landlord is provided with a Monetary Order in the amount of \$1,200.00 to ensure the tenants pay the rent as

agreed upon during this hearing. The landlord is hereby authorized to retain the tenants' security deposit.

With respect to utilities, in order for a landlord to require a tenant to pay the landlord for utilities, the tenancy agreement must provide for such a requirement. In the absence of a written tenancy agreement I only have disputed verbal testimony to rely upon. As the landlord has the burden to prove that he is entitled to receive utilities from the tenants, the landlord has not sufficiently met the burden of proof and the landlord's claim for utilities fails.

I make no order with respect to the filing fees paid by each of the applicants and each party will bear the cost of the filing fee paid for their applications.

#### Conclusion

The parties reached a mutual agreement to end the tenancy on January 18, 2009. The landlord is provided with an Order of Possession effective January 18, 2009 and a Monetary Order in the amount of \$1,200.00 to ensure the tenants fulfill the terms of the mutual agreement. The landlord is authorized to retain the tenants' security deposit.

January 8, 2009

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Date of Decision

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Dispute Resolution Officer