



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, O, OLC, OPB, OPR, SS, & FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with three applications for dispute resolution, two brought by the tenant and one brought by the landlords. All files were heard together.

### Tenant's first application

This is a request from the tenant to have a section 46 Notice to End Tenancy that was received on September 8, 2009 cancelled, and a request of the landlord bear the \$50.00 cost of the filing fee that was paid for this dispute resolution application.

### Tenants second application

This is a request from the tenant to have a section 46 Notice to End Tenancy that was received on October 2, 2009 cancelled, and a request of the landlord bear the \$50.00 cost of the filing fee that was paid for this dispute resolution application.

## Landlords application

This is a request by the landlord for an Order of Possession based on a section 46 Notice to End Tenancy for nonpayment of \$550.00 in utilities. The landlord is also requesting an order for those outstanding utilities.

I will deal with the tenants first application and the landlords application first as they are related.

## Background and Evidence

On September 8, 2009 the landlord served the tenant with a section 46 Notice to End Tenancy for failing to pay the \$550.00 water bill.

The landlord testified that:

- Under the tenancy agreement the tenants were responsible for paying all utilities and have done so from the beginning of the tenancy; however when they were presented with the \$550.00 water utility bill to pay in August 2009 they refuse to pay it, and instead sent a counter bill to the landlord claiming that the landlord was responsible for paying back all the utilities that the tenants had paid totalling \$1550.21
- The tenants had misinterpreted or misrepresented the tenancy agreement, claiming that the water bill, garbage stickers, telephone, and Hydro were included in the rent.
- Since the tenants refused to pay the water bill she served them with a 10 day Notice to End Tenancy.

The tenant testified that:

- It was their understanding that the water bill, garbage stickers, telephone, and Hydro were included in the rent as they had been written on the bottom of page 2 of the tenancy agreement under the section that shows what is included in the rent.
- They had been paying all the utilities, but thought that at the end of the tenancy the landlord would do a final settlement of the account and reimburse them for what they had paid.
- When the landlord presented them with the \$550.00 water utility bill, they realized that the landlord was not following what they thought was the agreement and therefore informed the landlord that, not only did they not owe money for the water utility bill, the landlord owed them \$1550.21 for utilities they had already paid.

In response to the tenants claim that they thought the landlord was responsible for all utilities the landlord pointed out that in December of 2008 the tenants had requested a \$200.00 rebate on the Hydro utility because the landlord had been using some of the tenants hydro, and suggested that if the tenants really believe the landlords were responsible for all utilities they would have just requested that the full amount be paid.

The tenant's response to this was that they requested that the \$200.00 amount be paid because, if it was not, they could not afford to pay the full Hydro bill. They still thought that at the end of the tenancy the landlord would settle the account and pay them back all the utilities they had paid.

## Analysis

It is my finding that the tenant has misinterpreted or misrepresented the tenancy agreement.

Under section 3 of the tenancy agreement, on page 2 where it says what is included in the rent, it states “check only those that are included and provide additional information if needed”. Clearly the boxes for water, electricity, and garbage collection have not been checked off. There is no box for telephone.

The landlord has checked off the box for stove and oven, dishwasher, refrigerator, window coverings, and laundry, and therefore I find it very unlikely that the landlord would have failed to check off the boxes for water, electricity, and garbage collection if those were to be included in the rent.

I also find it very unlikely the landlord would have agreed to pay for telephone.

The fact that the tenants paid all the utilities up until they received the water utility bill supports the landlord’s claim that the tenants knew that they had to pay the utilities and the fact that the tenant only requested that the landlord pay a portion of the Hydro bill in December, also supports the landlords claim.

Therefore it is my decision that I accept the landlord's explanation that “water bill, garbage stickers, telephone, and Hydro” was written on the bottom of the page at the time that the tenants were informed of utilities that they would be required to pay.

## Conclusion

The tenant's first application is dismissed in full without leave to reapply, and I have issued an order for the tenants to pay \$550.00 to the landlord by November 1, 2009 to cover the water utility bill. The request for the Order of Possession is addressed in the following:

## Tenant's second application

This was a request to have a Notice to End Tenancy for non-payment of October 2009 rent cancelled.

Although they do not agree on why, both the landlord and the tenant agree that October 2009 rent, as yet, has not been paid. The tenant claims to have mailed the cheque, however the landlord claims never to have received it.

At the hearing however the landlord agreed that if the tenants pay the outstanding October 2009 rent, along with the full November 2009, rent and the \$550.00 for the water utility, for a total of \$4050.00, by November 1, 2009, the tenants can stay until the end of November 2009.

The tenant stated that it was their intention to vacate the rental unit at the end of November 2009 anyway, and therefore although he disagreed with my decision about the interpretation of the tenancy agreement, he agreed to pay the full \$4050.00 to the landlord by November 1, 2009, and then would possibly pursue the matter through the courts to attempt to have my decision about the utilities reversed.



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I have therefore issued an Order of Possession that is enforceable 72 hours after service on the tenants. This has been issued to give the landlord some security in case the tenants fail to pay the full \$4050.00 on November 1, 2009.

If the full \$4050.00 is paid by November 1, 2009, the landlord will not enforce the 72 hour notice to end tenancy and this tenancy will end at 1 p.m. on November 30, 2009.

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: October 23, 2009.

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Dispute Resolution Officer