



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**     OPR, MNR, FF

### **Introduction**

This hearing dealt with an application by the landlord for an order of possession, a monetary order for unpaid rent, and recovery of the filing fee for the cost of this application.

All parties appeared by way of conference call hearing and gave affirmed testimony. The landlord was assisted by an interpreter, who was affirmed to well and truly interpret the proceedings from the English language to the Korean language and from the Korean language to the English language to the best of her ability.

### **Issues(s) to be Decided**

Is the landlord entitled for an Order of Possession for unpaid rent and utilities?

Is the landlord entitled to a monetary order for unpaid rent and utilities?

### **Background and Evidence**

At the outset of the hearing, the tenants testified that this tenancy began on December 1, 2009. That evidence was not disputed by the landlord. Rent in the amount of \$950.00 is payable in advance on the first day of each month. The rental unit was a basement suite, occupied by two brothers, and the landlords resided in the upper unit of the house.

At the beginning of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$475.00, and it was agreed that the tenants would pay the gas

bill each month upon it being presented to them by the landlord. One gas bill covered both units, and one hydro bill covered both units. The tenants were not required to pay the hydro bill, and the building was heated with gas. There was no written Tenancy Agreement.

The tenants testified that the landlord did provide a gas bill to them each month, and they paid it each month. The landlord received a hydro bill in January for \$372.00 which was to cover November and December, and asked the tenants to pay half of it, in the amount of \$186.00. The tenants refused to pay it. They testified that when they refused, the landlord stated that the hydro for the previous tenant was always under \$130.00 and therefore, they should pay half of this bill. The tenants stated that they would move out at the end of February, but asked about the return of their security deposit. The landlord stated that he was going to apply their security deposit to the hydro bill, and therefore, it would not be returned to them.

The tenants testified that the heat was controlled by the landlords in the upper unit, and they asked him to turn on the heat but he speaks very little English and either didn't understand their request, or didn't know how to turn on the heat. They had to wait for 10 days for the landlord's wife to return from Korea before they had any heat. One of the tenants has children from a previous relationship that visit him, and having no heat is unacceptable. As a result, they bought electric heaters. After the landlord's wife returned from Korea, the heat was still not turned on continuously and they had to rely on the electric heaters. They stated that had the landlord turned on the heat, the gas bill would have been higher and the hydro bill ought to have been lower and they would have paid the gas bill without question.

The landlord then disputed the date that the tenancy began, and testified that the tenants moved into the unit in October, 2009. The landlord did not dispute the earlier evidence of the tenants that the tenancy began in December 1, 2009 until I heard evidence about the fact that the hydro bill received in January actually covered the months of November and December. I find this evidence is incorrect, and that the tenancy actually began December 1, 2009.

The tenant failed to pay rent in full for the month of February, 2010, but paid half of it in order to protect their security deposit because the landlord had told them that he would be applying it to the unpaid hydro bill, and on February 4, 2010 the landlord served the tenant with a notice to end tenancy for non-payment of rent.

### **Analysis**

Based on the evidence, I find that both the landlord and the tenants are in breach of the *Residential Tenancy Act*. Firstly, the tenant cannot withhold rent even if the landlord is not in compliance with the *Act* or the Tenancy Agreement. Further, the landlord cannot increase the rent except as provided for in the *Act* and the regulations, nor can the landlord require the tenants to pay a utility bill that was not contracted for at the beginning of the tenancy. Also, the landlord cannot withhold heat or any other service that is essential to the tenants' use of the rental unit as living accommodation.

Based on the testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

As for the monetary order, I find that the landlord has established a claim for \$475.00 in unpaid rent, but has not sufficiently established a claim for unpaid utilities.

The Landlord's Application for Dispute Resolution claims \$661.00 for February's rent, which I find includes utilities for which the landlord is not entitled to claim. The Application also claims rent in the amount of \$950.00 for rent for the month of March, 2010, which I find the landlord is not entitled to due to the breach of the *Act* by the landlord, and I dismiss that portion of his claim without leave to reapply. The landlord has further applied for a monetary order for \$186.00 for hydro, which I dismiss without leave to reapply.

**Conclusion**

I order that the tenants vacate the unit on or before February 28, 2010.

I order that the landlord retain the security deposit and interest of \$475.00 in full satisfaction of the claim for unpaid rent, and I order that the tenants are not required to pay the \$475.00 as stated on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for outstanding rent for the month of February, 2010, nor the utilities claimed on that notice.

The balance of the landlord's claim is hereby dismissed without leave to reapply.

Since the applicant has not been successful in the claims applied for, I am not going to order that the landlord recover the filing fee for the cost of this application from the tenants.

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 26, 2010.

---

Dispute Resolution Officer