



# **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNR, OPR, MNSD, FF

### **Introduction**

This hearing was convened to deal with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated February 8, 2010 and a monetary order for rent and utilities owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony in turn.

At the outset of the hearing, the parties advised that the tenant had vacated on March 2, 2010. Therefore, no Order of Possession was necessary.

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

The landlord was still seeking a monetary order claiming unpaid rent of \$700.00 for February 2010 and an estimated \$400.00 for utilities owed. The issues to be determined based on the testimony and the evidence are:

- Whether or not the landlord is entitled to monetary compensation for rental arrears owed.
- Whether or not the landlord is entitled to be reimbursed for utilities owed.

### **Preliminary Matter: Parties to the Dispute**

In addition to the tenant, D.D., the landlord's application had also included, as party to the proceedings the tenant's mother, J.D., with whom the landlord apparently had discussed the rental arrears owed by the tenant, D.D. The

landlord's testimony was that in December 2009, he engaged in a telephone conversation with the tenant's mother and she had committed to paying for the rental arrears and rent owed on behalf of the tenant to ensure the continuation of the tenancy until March 2010. The landlord subsequently received rent owed for December 2009 and January 2010 which was deposited directly into his bank account. However the rent for the month of February 2010 was not paid. The landlord stated that J.D. was included as a respondent in the proceedings because, in light of her promise to pay, he felt that she was also to be held responsible for the rental arrears owed. J.D. testified that she had given her son funds, but was not a co-tenant in any respect and that she was incorrectly named as one of the respondents in this proceeding.

I find that to qualify as a respondent in a dispute under the Residential Tenancy Act, the person named as a party to the proceedings must be a tenant. Section 1 of the Act defines "Tenancy" as a tenant's right to possession of a rental unit under a tenancy agreement. The Act defines "Tenancy Agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas, provision of services and facilities provided, which includes a license to occupy a rental unit.

I find that J.D. did not reside in the unit at any time and had no right to possession of the premises under any agreement. I find that there was no tenancy relationship between J.D. and the landlord. I find that the landlord had already entered into a tenancy agreement solely with the tenant, D.D., in August 2009.

I find that, even if it was proven that the parties both decided that J.D. would join the existing tenancy under the same agreement, this would not be permitted under section 14 of the Act which states that a tenancy agreement can not be to be amended to change or remove a standard term.

Given the above, I find that J.D. is not a party to the landlord's application and can have no standing in the proceedings before me, other than that of witness. Accordingly, I amend the application to exclude J.D. as a party.

### **Background and Evidence**

The tenancy began in August 2009 with rent set at \$700.00 per month and a deposit of \$350.00 was paid. There was no written agreement.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated February 8, 2010 with effective date of February 20, 2010. The Notice showed that the tenant was in arrears for \$700.00 for rent for February 2010. No utility arrears were indicated on the notice. No other evidence was submitted.

The landlord testified that the tenant occupied a portion of the building and was required to pay a portion of the utilities, which were in the landlord's name.

The landlord is claiming \$700.00 for rent owed, \$400.00 for utilities, \$50.00 for the cost of the application and also seeking to retain the \$350.00 security deposit in satisfaction of a portion of the debt.

The tenant testified that the claim for rent was not being disputed. However the tenant is disputing the claim for utilities as the landlord had never presented any invoices to support the charges.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy and has not paid the outstanding rent. I find that the landlord is entitled to monetary compensation of \$700.00 for rent owed.

In regards to the \$400.00 claim for the cost of utilities, I draw attention to section 46 (6) which states that if a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and the utility charges are **unpaid more than 30 days**

**after the tenant is given a written demand for payment** of them, then the landlord may treat the unpaid utility charges as unpaid rent .

I find that the Ten-Day Notice form dated February 8, 2010, showed no amount was owed for utilities. I find that the landlord did not prove that a written demand was made for the utilities. I find that the landlord did not have a written provision in the tenancy agreement indicating what arrangements were agreed-upon in regards to the percentage of utilities for which the tenant would be responsible nor how and when payment would be made. The landlord also failed to offer sufficient proof of the utility charges by neglecting to submit invoices from the providers.

While I accept that utilities were not included in the rent and that the tenant had some obligation to pay, I am not able to grant a monetary order for compensation because the landlord did not comply with provisions of the Act and also due to the fact that there is insufficient information proving the costs. Accordingly the portion of the landlord's claim relating to the utilities is dismissed without leave.

I find that the landlord is entitled to total monetary compensation of \$750.00 comprised of \$700.00 for rent and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$350.00 in partial satisfaction of the claim leaving a balance due of \$400.00.

### **Conclusion**

I hereby grant the Landlord an order under section 67 for \$400.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

March 2010

Date of Decision

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Dispute Resolution Officer