



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, CNC, RP, MNDC, MNSD

### Introduction

This matter initially dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy dated July 1, 2010 and a One Month Notice to End Tenancy for Cause dated June 30, 2010 as well as for an order that the Landlord make repairs. On August 20, 2010, the Tenants amended their application and instead of seeking to cancel the Notices and obtain an order for repairs, they applied for the return of their security deposit and to recover a utility overpayment.

The Tenants said they served the Landlord with their amended application by registered mail on August 20, 2010. The Landlord said she did not pick up the mail until August 27, 2010. According to the Canada Post online tracking system, a notification card was left for the Landlord on August 23, 2010. Section 90 of the Act says that a document delivered in this manner is deemed to be received by the recipient 5 days later.

At the beginning of the hearing the Landlord sought to adjourn this matter as she claimed she did not have an adequate opportunity to respond. When asked to clarify what responding information she wished to submit, the Landlord indicated that she wished to bring a claim for unpaid rent and utilities and for damages to the rental unit. However, the Landlord was initially served with the Tenants' application in early July 2010 and I find that she could have filed an application at that time to make a claim of that nature. Consequently, I find that the Landlord's reasons for requesting an adjournment of this matter are not related to her ability to respond to the Tenants' application and as a result, her request for an adjournment was denied.

### Issues(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit?
2. Are the Tenants entitled to recover an overpayment of utilities?

### Background and Evidence

This month-to-month tenancy started on May 15, 2010. Rent was \$875.00 per month payable in advance on the 1<sup>st</sup> day of each month plus ½ of the utilities for the rental property. The Tenants claim that the tenancy ended on July 30, 2010 when they moved out. The Landlord claims that the tenancy ended on August 15, 2010 because the Tenants had items still stored in a garage as of that date and had not returned the keys. The Landlord admitted, however, that the Tenants had removed all of their belongings

from the living area of the rental unit by the first week of August 2010. The Landlord also claimed that the Tenants did not pay rent for July and August 2010. The Tenants paid a security deposit of \$437.50 at the beginning of the tenancy.

The Tenants claimed that the municipal utility account was in the Landlord's name and that although the statements were mailed to the rental property, the statements were delivered to the Landlord unopened. The Tenants claim that prior to July 27, 2010, they never made a utility payment because they never received a copy of the utility statement from the Landlord and she never told them how much they were. The Tenants said that the power was disconnected twice during the tenancy and on the second occasion, July 27, 2010, they had to pay \$127.70 to have it reconnected. Consequently, the Tenants sought to recover this amount from the Landlord.

The Landlord claimed that the Tenants made excuses about paying rent and utilities when she approached them for payment. The Landlord also claimed that the Tenants did see the utility statements and that the utilities were disconnected because the Tenants did not pay them as they were supposed to. The Landlord said the Tenants still have unpaid municipal utilities (ie. electricity and water) as well as for gas.

The Tenants claim that the Landlord did not prepare a move out condition inspection report at the end of the tenancy although they contacted her about doing one. The Tenants said they did not give their forwarding address in writing to the Landlord at the end of the tenancy.

## Analysis

I find that there is insufficient evidence to conclude that the Tenants made an overpayment of municipal utilities. The Tenants admitted that prior to July 27, 2010 they had not paid any of these bills. The copy of the invoice provided by the Tenants shows a previous statement balance (for June 2010) of \$197.02 and a current month's balance (for July 2010) of \$130.47. Given that the Tenants were responsible for ½ of these bills, their share would be \$163.44 which is more than the \$127.70 they paid on July 27, 2010. Consequently, the Tenants' application to recover an overpayment of utilities is dismissed without leave to reapply.

Pursuant to s. 38(1) of the Act, a Landlord's obligation to return a security deposit to a Tenant does not arise until 15 days after the tenancy ends or the date the Tenant gives the Landlord their forwarding address in writing (whichever is later). The Tenants claim that the tenancy ended on July 30, 2010 however they also admitted that they have not yet given the Landlord their forwarding address in writing. Consequently, I find that the Tenants' application for the return of their security deposit is pre-mature and it is



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dismissed with leave to reapply once the Tenants have provided their forwarding address in writing to the Landlord and 15 days have expired from that date.

## Conclusion

The Tenants' application to recover a utility payment is dismissed without leave to reapply. The Tenants' application to recover their security deposit is dismissed with leave to reapply.

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: August 30, 2010.

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Dispute Resolution Officer