



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes

For the tenant – CNR, MNDC, OLC, PSF, RR, O, FF

For the landlord – OPR, MNR, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenant seeks to cancel the 10 Day Notice for unpaid rent, and to recover their filing fee. The landlords seek an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent, and to recover their filing fee.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the tenant has also applied for a Monetary Order for money owed or compensation for damage or loss, an Order for the landlord to comply with the *Act*, An Order for

the landlord to provide services or facilities agreed upon but not provided and order to reduce rent for repairs, services or facilities agreed upon but not provided. I find these sections are unrelated to the main issue. Therefore the tenants application for a Monetary Order for money owed or compensation for damage or loss is dismissed with leave to reapply and the reminder of his application for An Order for the landlord to provide services or facilities agreed upon but not provided and order to reduce rent for repairs, services or facilities agreed upon but not provided are dismissed without leave to reapply.

#### Issue(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?
- Are the landlords entitled to an Order of Possession due to unpaid rent?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?

#### Background and Evidence

Both parties agree that this tenancy started on September 02, 2010. This is a fixed term tenancy which is due to expire on September 01, 2011. Rent for this unit is \$1,500.00 per month and is due on the 1<sup>st</sup> of each month in advance.

#### The landlord's application

The landlords testify that the tenant did not pay his rent for February and March, 2011 on the day it was due. The landlord served the tenant with a 10 Day Notice for unpaid rent on March 03, 2011. This Notice states the tenant owes rent of \$4,500.00 which was due on March 01, 2011. The landlord states they did make an error on the amount of rent outstanding as they had also included unpaid rent for January, 2011 when in fact this amount had been paid by the tenant. The landlords wish to amend the outstanding rent to \$3,000.00 which includes unpaid rent for February and March, 2011 only. The landlords also seek unpaid rent for April, 2011. The landlords seek an Order of Possession to take effect as soon as possible and request a Monetary Order for \$3,000.00 to recover the unpaid rent.

The tenants' application

The tenant testifies that he withheld rent for February, 2011 as he had had a flood and he could not pay the rent. He does not dispute that he owes rent for March, 2011. He states on February 17, 2011 the electricity to the unit was cut off and he believed the landlord had done this because he had not paid rent. He states the Hydro was in the landlords name but he called BC Hydro and was told the power had been cut off because of an outstanding bill. The tenant states he tried to contact the landlords but they did not return his calls. He states he contacted BC Hydro again and told them as he lived at the unit he wanted the bill put into his name and states he paid \$800.00 to BC Hydro towards the landlord's outstanding bill. The tenant notified the landlord of this payment when the landlords served him with the 10 Day Notice to End Tenancy and told him this amount had been deducted from rent and rent for January, 2011 had been paid. Therefore the tenant claims the amount of unpaid rent on the Notice was false. The tenant claims he offered to pay \$1,500.00 to the landlord but he refused to accept it.

The landlords' agent testifies that the tenant did not offer to pay any rent to him when he served him with the 10 Day Notice to End Tenancy on March 03, 2011. Instead the tenant just threatened to dispute the Notice. The landlords' agent testifies that the rent does not include Hydro and the tenant owed \$200.00 for Hydro from September, 2010 and did not pay anything else toward Hydro except \$100.00. The tenant was supposed to pay towards the Hydro each month and they had a verbal agreement in place that the tenant would pay extra amounts towards the Hydro if the bill was excessive as he sublets to other tenants. The landlord states the Hydro was cut off because the tenant had not paid for the Hydro as agreed. The landlord testifies the Hydro bills would come directly to the unit for the tenant to settle and agrees these bills would be in the landlord's name.

The tenant disputes the landlord's testimony. He testifies that if the Hydro bills did come to the unit and were in the landlords name then he could not open the landlord's mail. He agrees he paid \$100.00 as an extra amount towards Hydro and the landlord was supposed to look at the bill and return any over payment back to the tenant. The tenant testifies that he did not have a verbal agreement with the landlord to pay extra Hydro each month and the tenancy agreement does not state that he should. The tenant states the landlord has never given him a Hydro bill or a request for payment of a bill. The tenant states he has paid \$900.00 in total for Hydro.

Analysis

There is no dispute about the amount of outstanding rent by the tenant. However, the tenancy agreement does not specify that rent does not include Hydro. When one party's evidence is contradicted by the other person the burden of proof falls on the person making the claim. In this instance the landlord claims Hydro costs are separate and not included in rent. The tenant argues that he did not have an agreement with the landlord to pay separate Hydro costs. In this matter the landlord would need to provide corroborating evidence to show that utilities were not included in the rent and as the tenancy agreement does not specify this then I am reluctant to find in favor of the landlords in this matter.

Therefore, it is my decision that the tenant paid \$800.00 to BC Hydro to get the power to the unit restored and an additional \$100.00 to the landlord for Hydro and this amount will be deducted from the rent owed. Consequently, I find the landlord is entitled to recover rent arrears for February of \$600.00 and for March, 2011 of \$1,500.00 to a total sum of \$2,100.00. With regard to the landlords claim for unpaid rent for April, 2011 as this hearing was held on April 01, 2011 the landlords application to recover April's rent is premature and is therefore dismissed with leave to reapply. Consequently, the landlords will receive a Monetary Order for unpaid rent of **\$1,500.00** pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 88 of the *Act*. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days but did apply to dispute the Notice.

Based on the foregoing, as I have found that the tenant did not pay the balance of rent for February, 2011 and failed to pay rent for March, 2011 the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

As the landlords have been largely successful in this matter they may recover the **\$50.00** filing fee paid for this application from the tenant pursuant to s.72 (1) of the *Act*.

Conclusion

The tenants' application heard today is dismissed without leave to reapply.

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,550.00**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days after service** of the Order upon the tenant. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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: April 04, 2011.

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Residential Tenancy Branch