



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and utilities, an Order to keep all or part of the security deposit and to recover the cost of the filing fee. At the outset of the hearing the landlords' agent confirmed that the tenants have moved out and they withdraw their application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 18, 2011. The tenant is deemed to be served these documents the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

This tenancy started on May 15, 2009. This was a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. The tenancy ended on or about March 31, 2011. Rent for this unit was \$700.00 per month due on the 1<sup>st</sup> of each month and the tenants' share of

utilities was one third of the bills. The tenant paid a security deposit of \$350.00 on May 15, 2009.

The landlords' agent testifies that the tenant did not pay rent for February or March, 2011. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on March 02, 2011. This was posted on the tenants' door. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on March 12, 2011. The tenant did not pay the outstanding rent or dispute the Notice. The landlord is seeking a Monetary Order for rent arrears for February and March, 2011 to the sum of \$1,400.00. The landlord also seeks to recover late fees for these two months to the sum of \$50.00 as documented in the tenancy agreement.

The landlords' agent testifies that the tenant failed to pay his one third shares of the utilities. The landlords' agent testifies that when the utility bills came into the upstairs tenant he made copies of these and gave them to the downstairs tenant asking for his portion to be paid. The landlord has provided copies of the records kept of any payments paid by the tenant. The landlord has provided copies of the Gas and Hydro utility bills from January 2010 to January 2011. Some of these bills have been paid in total by the upstairs tenant and some remain outstanding. The landlord seeks to recover \$454.31 for BC Hydro and \$ 351.99 for Gas to a total sum of \$806.30. The landlords' original claim for utilities was \$1,034.54 however the landlord amended this claim at the hearing and states there is additional utilities unpaid however he does not yet have the bills for these.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me. Section 26 of the *Act* states that rent must be paid on the day it is due. In this case rent was due on the first of each month and the tenant failed to make those payments for February and March, 2011. Therefore, I find that the landlord is entitled to recover rent arrears of **\$1,400.00** pursuant to s. 67 of the *Act*.

I further find the tenant did not pay his share of the utility bills after being given copies of the bills and requests for payment and the landlord is therefore entitled to recover the sum of **\$806.30** from the tenant pursuant to s. 67 of the *Act*.

The landlord is also entitled to claim **\$50.00** for late fees for these two months. **I order** the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit of **\$350.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$1,400.00
Late fees	\$50.00
<b>Subtotal</b>	<b>\$2,256.30</b>
Plus filing fee	\$50.00
Less security deposit	(-\$350.00)
<b>Total amount due to the landlord</b>	<b>\$1,956.30</b>

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,956.30**. The order must be served on the tenant and is enforceable through the Provincial Court 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 08, 2011.

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Residential Tenancy Branch