



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking an Order for Possession and a Monetary Order for unpaid rent. The Landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

Service of the conference call hearing documents was done in accordance with the Act, sent via registered mail to each Tenant. Canada Post tracking receipt information was provided in the Landlord's testimony.

The Landlord and his Agent appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing and in documentary form. No one appeared on behalf of the Tenants despite them being served notice of this hearing in accordance with the Act.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order for unpaid rent?

### Background and Evidence

The parties entered into a written tenancy agreement that began on July 1, 2010. Rent is payable on the first of each month in the amount of \$800.00 and the Tenants paid \$400.00 towards the security deposit. The tenancy agreement included an addendum which required the Tenants to pay \$130.00 per month towards the cost of hydro and natural gas and these utility bills are to be reconciled and adjustments made on a six month basis.

The Landlord and his Agent testified that the Tenants have been habitually late in paying their rent and utilities. They were granted an Order of Possession previously and then decided to reinstate the tenancy because the Tenants made a payment of \$1,100.00 on March 21, 2011.

When the Tenants failed to make the payments as agreed the Landlord issued another 10 Day Notice on April 30, 2011. The Landlord stated he personally served the 10 Day Notice to both Tenants in the back yard of the rental property on April 30, 2011.

While attempting to confirm the outstanding rent the Agent confirmed they do not keep a written tenant ledger to record rent due or payments received. When attempting to ascertain what the outstanding amount was the Landlord's Agent grouped the rent and utilities together stating \$930.00 per month was due.

I requested amounts owing and paid as of March 1, 2011 and the Agent advised as follows:

- Outstanding balance as of January 2011	\$390.00
- February 2011 rent and utilities (\$800 + 130.00)	\$930.00
- March 2011 rent and utilities (\$800 + 130.00)	\$930.00
- March 21, 2011 payment	-1,100.00
- March 29, 2011 payment	- 300.00
- April 1, 2011 payment	- 450.00
- April 1, 2011 rent and utilities (\$800 + 130.00)	\$930.00
- April 27, 2011 payment	- 300.00
- May 2011 rent and utilities (\$800 + 130.00)	\$930.00
- June 2011 rent and utilities (\$800 + 130.00)	<u>\$930.00</u>

Total Balance owing for rent and utilities of:	<b>\$2,890.00</b>
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The Landlord was disconnected from the call and dialled back into the call while his Agent was requesting an Order of Possession for as soon as possible.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply

with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenants.

**Order of Possession.** I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent in full within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Therefore I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent and unpaid utilities.**

Section 46 (6) of the *Act* provides 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, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under section 26 of the *Act*.

The Landlord claims for unpaid rent and unpaid utilities totaling \$2,890.00 which is comprised of accumulated unpaid rent from March 1, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month and that the Landlord has proven the test for damage or loss under the *Act*. Therefore I approve his claim for **\$2,890.00** of unpaid rent and utilities.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$2,890.00**. The order must be served on the Tenants 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: June 10, 2011.

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Residential Tenancy Branch