



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR FF MNR OPR FF

### Introduction

This hearing dealt with (a) an application by the tenant for an order setting aside the landlord's Notice to End Tenancy dated June 12, 2011, a monetary order and recovery of the filing fee; and (b) an application by the landlord for an order of possession, a monetary order and recovery of the filing fee. Both parties attended the hearing and had an opportunity to be heard.

### Issue(s) to be Decided

Are the parties entitled to the requested orders?

### Background and Evidence

This tenancy began on May 15, 2007. The rent is \$1,600.00 per month. A security deposit of \$800.00 and a pet damage deposit of \$400.00 were paid at the start of the tenancy. The rental unit is the main living space (two storeys) of a large detached home. There is another rental unit in the house which is smaller and is located in the back part of the lower floor. I will refer to this other unit as the "back unit" from here on.

In an addendum to the tenancy agreement the parties agreed that "*all utilities will be the responsibility of the tenants*". There is only one meter for the residential property and it is the position of the landlord that there was a verbal agreement regarding the cost split for utilities between the two rental units. According to the landlord, the split was two thirds for the main rental unit and one third for the back unit. The tenants dispute the landlord's position in this regard. The tenants say that when they signed the lease they were supposed to establish a rate for utilities with the landlord but that no agreement was ever reached in this regard.

The tenants became frustrated with the fact that they were not getting any response from the landlord on the issue of the utilities so they decided to withhold a portion of the rent for June. They felt this "*was the only way [they] could get her attention.*" The tenants gave the landlord a cheque for \$1,450.00 instead of \$1,600.00 and this did, in

fact, get the landlord's attention. The landlord returned the cheque to the tenants and served them with a Notice to End Tenancy for non-payment of rent on June 12, 2011. The tenants then disputed the Notice on June 17<sup>th</sup>.

As of the date of this hearing, the rent has not been paid for either June or July.

### Analysis

#### Notice to End Tenancy & Order of Possession

The tenants have requested an order setting aside the landlord's Notice to End Tenancy. However, the tenants have not presented any basis for their request other than that they were trying to get the landlord to deal with the issue of the utilities. Section 26 of the Act states as follows:

#### ***Rules about payment and non-payment of rent***

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Under the Act, a tenant may deduct an amount from the rent that has been ordered by a dispute resolution officer or an amount that has been spent by the tenant on emergency repairs to the rental unit. Neither of these circumstances exist in the present case and as a result, the tenants were not entitled to withhold any rent. The tenants' request for an order setting aside the landlord's Notice to End Tenancy dated June 12, 2011 is therefore dismissed and the landlord's request for an order of possession is granted.

#### Tenants' request for a monetary order

The tenants have requested a monetary order in the amount of \$1,325.00 on the basis that they believe they have been paying more than their fair share of the utilities for the residential property. Unfortunately, the issue of the percentage share of the utilities was not set out in the tenancy agreement and the parties do not have the same recollection as to what was agreed upon. Given these facts, I cannot now impose an agreement on the parties as to responsibility for the utilities and I cannot hold the landlord responsible for the utilities in the face of the clear written provision in the addendum that the "*all utilities will be the responsibility of the tenants.*" I therefore dismiss the tenants' application for a monetary order.

*Landlord's request for a monetary order*

The landlord has requested a monetary order in the amount of \$3,200.00 comprised of unpaid rent for the months of June and July. Clearly the rent is outstanding and must be paid. I therefore grant the landlord's request and order the tenants to pay to the landlord the sum of \$3,200.00.

*Filing Fees*

Based on the outcome of these applications, I order the tenants to pay to the landlord the sum of \$50.00 representing the filing fee for this application. The tenants' request to recover their filing fee is dismissed.

*Conclusion*

*Order of Possession* - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

*Monetary Order and Security Deposit* - I find that the landlord has established a total monetary claim of \$3,250.00 comprised of \$3,200.00 in unpaid rent for June and July and the \$50.00 fee paid by the landlord for this application. I order that the tenant pay the sum of \$3,250.00 to the landlord. This order may be filed in the Small Claims 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*.