



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the tenants had vacated the rental unit. As the issues of whether to set aside or uphold the notice to end tenancy has been resolved, I dismiss the tenants' claim and the landlord's claim for an order of possession. The hearing proceeded to address only the landlord's monetary claim.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on July 1, 2009 at which time the tenants paid a \$375.00 security deposit and a \$375.00 pet deposit. The parties further agreed that the tenants vacated the unit on or about August 21, 2011.

The landlord seeks to recover \$780.00 in unpaid rent for the month of August. The tenants acknowledged that they did not pay rent in August.

The landlord seeks to recover \$259.65 in unpaid water for the length of the tenancy. The parties agreed that the tenancy agreement provided that the tenants were responsible to pay 1/3 of the water costs for the residential property and that they had not made payments during the tenancy. The tenants argued that they should not be responsible for those payments as the landlord did not request payment until the end of the tenancy. The landlord testified that as the amount was relatively small and as she received invoices yearly rather than monthly, she had agreed with the tenants to wait until the end of the tenancy to receive payment. The tenants denied having had a

conversation with the landlord about delaying water payments until the end of the tenancy.

The landlord seeks to recover \$93.81 in utility payments for natural gas from June 20, 2011 – July 20, 2011 and for electricity from May 20, 2011 – July 20, 2011. The landlord testified that the tenants had written her a cheque for \$93.81 but had cancelled the cheque. The tenants acknowledged having cancelled the cheque but argued that they did so because they had been without electricity for a period of time in early August and they felt they should not have to make utility payments because of that.

The landlord seeks to recover \$390.00 which she estimates as the depreciated value of a sofa and couch she left in the unit. The landlord testified that she had purchased the set new in 2006 for \$1,800.00 and that they were missing at the end of the tenancy. The tenants claimed that both pieces were broken and testified that they spoke to the landlord about it and received her verbal permission to discard the items. The landlord denied having given the tenants permission to discard the furniture.

The landlord seeks to recover \$66.00 as the estimated cost of electricity and natural gas for the period from July 20, 2011 – August 20, 2011. She based her estimate on the bills for the previous month. The tenants again argued that they should not have to pay for utilities because they were without electricity for approximately one week. The landlord testified that the tenants had overloaded electrical circuits on several occasions tripping the breaker and stated that when she was advised that the breaker had been tripped, she reset it immediately. The tenants claimed that the landlord refused to reset the breaker, leaving them without power for a week until a police officer persuaded the landlord to reset the breaker.

The landlord seeks to recover the \$50.00 filing fee paid to bring her application.

### Analysis

The tenants have an obligation under the agreement and the legislation to pay rent when it is due regardless of whether they feel the landlord is meeting her obligations under the Act. I award the landlord \$780.00 in rent for the month of August.

The tenants had a contractual obligation to pay 1/3 of the water costs during their tenancy. The fact that the landlord did not attempt to collect this payment until the end of the tenancy does not relieve the tenants of their contractual obligation. I find that the tenants are obligated to pay the \$259.65 in unpaid water bills and I award the landlord this sum.

Although the tenants claimed they should not have to pay any utility payments whatsoever because they allege they were without power for a period of time, I can find no reason why they should not be required to pay all of the natural gas and electrical bill owing for the period from May 20 – July 20, particularly as they did not allege that services were withheld during that period. I award the landlord \$93.81 for utilities for that period.

The tenants had an obligation at the end of the tenancy to return to the landlord the rental unit and any furnishings provided by her in good condition, less reasonable wear and tear. Although the tenants claim that the landlord gave them permission to discard her sofa and couch, she denied having given permission and I find that they have not proven that they had her consent. The tenants also claimed that the furniture was broken, yet provided no evidence of this. I find that the landlord is entitled to recover the depreciated value of the furniture. However, the landlord claimed that she paid \$1,800.00 for the furniture in 2009. The landlord did not provide a receipt showing the amount that she paid for the furniture, but provided a photograph of the couch and sofa and I am unable to determine how the furniture could be worth what she claims. In the absence of evidence to corroborate her claim as to the value of the furniture, I find that an award of \$200.00, representing \$100.00 for each piece, to be reasonable. I award the landlord \$200.00.

The landlord's estimate of the cost of utilities for the period from July 20 – August 20 is reasonable as it is based on what was charged in the previous month and I find that she is entitled to recover the cost of utility services. However, I am not persuaded that the tenants had access to electrical power during that entire period. Although the landlord claimed that the tenants were repeatedly overloading the circuits, it does not make sense that this would happen so frequently in such a short period of time, particularly during times when the landlord was away during the day and could not reset the breaker. I find it more likely than not that the tenants were deprived of electricity for a week. The landlord claimed \$27.00 for 4 weeks of electrical power and I find that she is entitled to recover \$20.25, which is 75% of that claim, as well as the full \$39.00 claim for natural gas. I award the landlord \$59.25.

As the landlord has been substantially successful in her claim, I find that she is entitled to recover her \$50.00 filing fee and I award her that sum.

### Conclusion

In conclusion, the landlord has been successful in the following claims:

August rent	\$ 780.00
Unpaid water charges	\$ 259.65
Unpaid utilities from May 20 – July 20	\$ 93.81
Missing furniture	\$ 200.00
Unpaid utilities from July 20 – August 20	\$ 59.25
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$1,442.71</b>

I order the landlord to retain the \$750.00 in security and pet deposits in partial satisfaction of this award and I grant the landlord a monetary order under section 67 for the balance of \$692.71. This order may be filed in the Small Claims Division of the Provincial 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: August 31, 2011

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Residential Tenancy Branch