



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – RP, RR

For the landlord – OPR, OPB, MNR, MNSD

### Introduction

This hearing was convened by way of conference call in response to both parties' applications. Both applications were heard during the hearing today. The landlords have applied for an Order of Possession for unpaid rent and utilities and because the tenants have breached an agreement with the landlord. The landlords have also applied for a Monetary Order for unpaid rent and utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit. The tenants have applied for an Order for the landlord to make repairs to the unit, site or property and an Order to allow the tenants to reduce their rent for repairs, services or facilities agreed upon but not provided.

The tenants, one landlord and the landlords advocate attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch however the landlords claim they did not receive the tenants' evidence and the tenants provided no evidence to show their evidence was given to the landlord. The tenants' evidence has therefore not been considered. The landlord did send their evidence package to the tenant in advance of this hearing. All verbal testimony and the landlords documentary evidence has been reviewed and is considered in this decision.

### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession due to unpaid rent and utilities?

- Are the landlords entitled to an Order of Possession because the tenant has breached an agreement with the landlord?
- Are the landlords entitled to a Monetary Order to recover unpaid rent and utilities?
- Are the landlords entitled to keep the tenants security deposit?
- Are the tenants entitled to an Order for the landlord to repair the unit?
- Are the tenants entitled to reduce their rent for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

Both parties agree that this month to month tenancy started on July 901, 2010. Rent for this unit is \$950.00 per month plus two thirds of the utilities. Rent is due on the first day of each month in advance. The tenants paid a security deposit of \$475.00 in June, 2010 which is held in trust by the landlords.

The landlords testify that the tenants owe rent of \$127.00 for February, 2011; \$98.53 for August, 2011; and \$49.00 for September, 2011. The first 10 Day Notice was given to the tenants in July, 2011 but the landlords did not follow through with this. The landlords testify that the tenants also owe the sum of \$493.80 in unpaid Hydro from September, 2010 to August 2011. The landlords state they have only claimed \$410.41 of this amount as they underestimated it when doing their calculations for the 10 Day Notice. The landlords state they are happy to accept \$410.41 from the tenants. The landlords claim the tenants were given copies of each BC Hydro bill every two months and expected their share of these bills to be paid promptly. The landlords state this is the reason they cannot present these bills in evidence as they gave the originals to the tenants and had to get a print out from BC Hydro to calculate the amount owed.

The landlords testify that a second 10 Day Notice was served upon the tenants in person on October 08, 2011. This Notice has an effective date of October 18, 2011. The landlords claim both pages of this Notice were served to the tenant however only one page one has been presented in evidence.

The landlords seek an Order of Possession for November 30, 2011. The landlords also seek a Monetary Order to recover the unpaid rent and utilities to the sum of \$684.94. The landlord has claimed the sum of \$1,159.94 but agrees to accept \$684.94.

The landlords request to keep the tenants security deposit of \$475.00 in partial satisfaction of this claim.

The tenants dispute the landlords claim, that they owe rent and utilities. The tenants claim that they had the gas account in their name and the other tenant living downstairs was supposed to pay one third of the gas bill. The tenants claim he did not do so and so they deducted these amounts from their rent payments to the landlord. The tenants testify that they also had a power outage in July and so deducted 20 percent from their rent as agreed with the landlord. The tenant states that this was not enough as they also had a large amount of food which was spoiled because their fridge did not work so they also deducted some rent to cover these costs in August.

The tenants testify that they have never seen a BC Hydro bill from the landlord. The tenant claims she asked the landlord for the bill as she did not want to pay anything before she had seen it.

The tenants testify that they did get a 10 Day Notice from the landlord on October 08, 2011 but they only received the page one of this notice and had no idea they could apply to dispute the Notice.

The landlord testifies that the tenants have breached an agreement with the landlords. The landlords state the tenancy agreement states that the tenants must only have one small dog. However, the tenants have four dogs at the rental unit. The landlord seeks an Order of Possession because the tenants were aware they should only have one small dog as per their agreement. The landlord states they have spoken to the tenants about this matter but have not sent them a breach letter.

The tenants testify that the other landlord knew they had four dogs and never complained to them or told them that this was not allowed.

The tenants testify that they have no heat in the bathroom and one bedroom. The tenant's state there is heat coming from the heat register but the heat must go out through the walls and the front door does not seal properly as the room is always cold. The tenant states the unit is heated by gas and her gas bills have gone up from \$64.00 to \$68.00 to \$71.26 and now have jumped to \$272.00. The tenants have not provided these bills in evidence.

The tenant states the toilet is also dripping. The tenant states she has put these complaints in writing to the landlord along with other repair issues. The tenant seeks an order for the landlord to make repairs to the heating and toilet.

The tenants withdraw their application to reduce their rent due to the repair issues and state they just want the repairs completed.

The landlords testify that the furnace was replaced in June, 2011 and they were unaware that the tenants had further problems with heating. The landlords state the front door closes and seals and the windows are double-paned. The landlords state they are happy to go to the property to look at these issues. The landlord states when they have tried to gain access to the unit before to look at repairs requested by the tenant. The female tenant has denied them access to the unit and told them that her friend had repaired the toilet.

During the course of the hearing the tenants and landlords reached an agreement about the Order of Possession. The tenants have agreed to vacate the rental unit on November, 30, 2011.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' application for an Order of Possession as both parties have reached an agreement on this matter I am not required to make a decision but

I have recorded the decision made between the parties that the tenants agree to vacate the rental unit on November 30, 2011. This agreement is binding pursuant to s. 63 of the *Act*.

With regards to the landlords claim for a Monetary Order for unpaid rent and utilities;  
Section 26 of the *Act* states:

*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.*

I have considered the evidence presented by the landlord and find in favor of their claim for unpaid rent to the sum of \$274.53. I also find it is likely that the landlord did provide Hydro bills to the tenants and therefore I also find in favor of the landlords claim for unpaid utilities to the sum of \$410.41. The landlord will receive a Monetary Order on both counts pursuant to s. 67 of the *Act*.

With regards to the landlords claim to keep the security deposit of \$475.00 I Find as the tenants owe rent and utilities the landlord is entitled to keep the security deposit in partial satisfaction of their claim pursuant to s. 38(4)(b) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$274.53
Unpaid utilities	\$410.41
Less security deposit	(-\$475.00)
Total amount due to the landlords	\$209.94

With regard to the tenants claim for an Order for the landlord to make repairs to the unit; I find it is likely that the tenants have put their requests for repairs in writing to the landlords. However, the tenants must allow access to the unit for the landlords to determine what, if any, repairs are required. Therefore, I Order the landlord to investigate the tenants' complaints about a lack of heat in the bedroom and bathroom and the dripping toilet and

take any necessary steps to remedy the problem if they find there is a deficiency in these areas.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$209.94. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I ORDER the landlord to investigate any issues they find with the heat in the bedroom and bathroom and the dripping toilet and to remedy any issues, if found, within seven days of receiving this decision.

Partial agreement by both parties

The tenants agree to vacate the rental unit on November 30, 2011. This agreement is in full and final settlement of the landlords' application for an Order of Possession based on the 10 Day Notice issued on October 08, 2011 and the landlords' application that the tenants have breached an agreement with the landlord.

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: November 04, 2011.

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Residential Tenancy Branch