



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – CNR

For the landlord – OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenants have applied to cancel the 10 day Notice to End Tenancy for unpaid utilities. The landlord has applied for an Order of Possession for unpaid utilities; for a Monetary Order for unpaid rent and utilities; for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to present evidence and cross exam each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the tenants entitled to have the 10 day Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to keep the tenants security and pet deposits?

Background and Evidence

Both parties agree that this month to month tenancy started on June 15, 2010. The tenants pay a monthly rent for this unit of \$1,000.00 which is due on the 1<sup>st</sup> day of each month. The tenants also agreed to pay 60 percent of the utilities each month to the landlord. The tenants paid a security deposit of \$500.00 in June 2010 and a pet deposit of \$250.00 in January, 2011.

The landlord testifies that the tenants are in arrears with their utilities. The landlord states he served the tenants with a 10 Day Notice to End Tenancy on October 25, 2011 in person. This Notice has an effective date of November 04, 2011 and states the tenants owe the amount of \$1,502.43 for utilities.

The landlord states in total the tenants' share of the utility bills for gas is \$813.64 from June, 2010 to October, 2011. The tenants' share of the utility bills for Hydro is \$1,467.40 from June, 2010 to September, 2011. The landlord testifies that he has sent copies of the utility bills to the tenants each month showing their 60 percent share. The landlord claims the tenants made payments totalling \$710.47 throughout the course of their tenancy.

The tenants dispute the amount outstanding and state they have paid \$885.00 towards the utility bills during their tenancy including \$40.00 agreed upon for the tenants to clean one of the landlords other units. The tenants have provided receipts from the landlord for some additional payments the landlord did not include in his summary of payments.

During the hearing both parties and the Dispute Resolution Office went through each of the utility bills presented by the landlord to determine the tenants total share of both utility bills for the duration of their tenancy. This total came to \$2,281.04. The Parties and the Dispute Resolution Officer also went through the receipts presented by the tenants and the Dispute Resolution Officer also reviewed the utility bills presented by the tenants. The landlord agreed the tenants did make some additional payments and agrees the tenants did pay \$885.00 towards their utility bills.

The landlord seeks to recover a loss of rental income for December as he states he will not be able to re-rent the unit for December 01, 2011 due to the hearing date and the date the tenants will be ordered to move from the unit.

The landlord seeks an Order of Possession to take effect as soon as possible due to these unpaid bills and seeks a Monetary Order for the outstanding utility bills of \$1,396.04.

The landlord seeks to keep the tenants security deposit of \$500.00 and pet deposit of \$250.00 to offset against the outstanding utilities. The landlord also seeks to recover his \$50.00 filing fee from the tenants.

The tenants do not dispute that they owe utilities to the landlord. The tenants testify however, that the landlord did not provide them with the original utility bills each month and some of the bills they did get were duplicated and had different sums owed on them. The tenants state there were unable to work out what they owed the landlord each month. The tenants agree they did not pay utilities each month as agreed under their tenancy agreement.

The tenants also testify that the landlord did not provide them with copies of receipts for all their payments. The tenants testify that they asked the landlord to let their tenancy continue for another six months if they paid the outstanding utilities. The tenant states at first the landlord agreed but later changed his mind and would not put anything in writing to them.

### Analysis

With regard to the landlords claim for unpaid utilities; It is my decision that the tenants have failed to pay utilities each month as agreed with the landlord. The tenants' argue that the bills given to them with the breakdown of their share were confusing and they argue they did not get all the bills. I have viewed the bills presented by the tenants and my first observations are that the way the landlord has broken the tenants share down is unclear. However once the system was explained it made perfect sense as the landlord had to deduct amounts from the bills that had not been paid from previous bills. There is no

evidence that the landlord did not provide copies of the bills each month to the tenants and the tenants and landlord now agree on the total amount owed to date of \$1,396.04.

Consequently, I find the landlord is entitled to a Monetary Order of **\$1,396.04** for the utility bills arrears pursuant to s. 67 of the Act.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent or utilities, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the utilities or apply for Dispute Resolution or the tenancy would end. The Notice was deemed served on October 25, 2011. The tenants did not pay the outstanding utilities but they did apply to dispute the Notice on October 27, 2011.

The tenants agree they owe utilities to the landlord and consequently the tenants' application to cancel the 10 Day Notice is dismissed without leave to reapply and I grant the landlord an Order of Possession.

With regard to the landlord's application for unpaid rent for December, 2011 as the Order of Possession has been issued for two days after service upon the tenants during November, it is my decision that the landlord claim for unpaid rent for December is premature as the landlord still has opportunity to re-rent the unit for December, 2011. If the unit remains unrented during December, 2011 the landlord is at liberty to file a new application for Dispute Resolution. Consequently, this section of the landlord's application is dismissed with leave to reapply.

With regard to the landlords claim to keep the security and pet deposits; It is my decision that the landlord is entitled to keep the security and pet deposits totalling **\$750.00** to offset against the outstanding utilities pursuant to s. 38(4)(b) of the Act.

I further find as the landlord has been partially successful with his claim he is also entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the Act, A Monetary Order has been issued to the landlord for the following amount:

Outstanding utilities	\$1,396.04
Less security and pet deposits	(-\$750.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$696.04</b>

### Conclusion

The tenants' application is dismissed without leave to reapply.

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 **\$696.04**. The order must be served on the Respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme 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: November 21, 2011.

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Residential Tenancy Branch