



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent and utilities; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on November 11, 2011. Mail receipt numbers were provided in the landlords' documentary evidence for each of the tenants. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

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

- Are the landlords entitled to a Monetary Order to recover unpaid rent and utilities?

### Background and Evidence

This month to month tenancy started on December 01, 2008. Rent for this unit is \$1,700.00 per month and is due on the first of each month. A written tenancy agreement has been provided by the landlord in evidence.

The landlords' testify that the tenants owe a balance of rent and utilities of \$4,163.61 up to October 01, 2011. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent and utilities on October 08, 2011. This was handed to the tenants in person. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 18, 2011. The tenants did not pay the outstanding rent or dispute the Notice within five days.

The landlords testify that since that time the tenants also failed to pay rent for November of \$1,700.00 and utilities of \$21.38 for gas and \$140.87 for Hydro. The tenants agreed to pay a two thirds share of all utilities and they have been given a monthly statement and a copy of the utilities each month. The total amount outstanding for both rent and utilities at this time is \$6,025.86.

The landlords have also requested to recover rent and utilities for December, 2011 as they do not think the tenants will move out before December and will not pay rent or utilities.

The landlords seek a Monetary Order to recover the outstanding rent and utilities and the filing fee paid for this proceeding and seek an Order of Possession to take effect as soon as possible.

### Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I find that the landlords are entitled to recover rent and utility arrears up to November, 2011 of **\$6,025.86** pursuant to s.67 of the *Act*.

With regards to the landlords claim for unpaid rent and utilities for December, 2011 I find this portion of their claim is premature as the tenants are still residing in the rental unit.

As the landlords have been partially successful in this matter, they are also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a Monetary Order for **\$6,125.86**

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an Order of Possession.

### Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$6,125.86**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The landlord is at liberty to file a new application to recover rent and utilities for December if they remain unpaid on the day it is due.

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 29, 2011.

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Residential Tenancy Branch