



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlords: OPR, MNR, FF  
                              Tenants: CNR, MNDC

### Introduction

This hearing was convened by way of conference call in response to applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The named landlord attended the conference call hearing and appeared as agent for the named landlord company. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents personally on October 21, 2011, and despite being notified by the Residential Tenancy Branch of the date and time for the tenant's application to be heard, neither of the tenants attended. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. The applicants (tenants) failed to attend to present their claim, and the respondent landlord appeared and was ready to proceed. In the absence of the party who made the tenants' application, I dismiss the claim without leave to reapply.

The landlord provided affirmed testimony, but no physical evidence in advance of the hearing. The tenants provided physical evidence in advance of the hearing. All evidence and the landlord's testimony have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent or utilities?  
Are the landlords entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The landlord testified that this fixed-term tenancy commenced roughly a couple of years ago and expired about 2 years after it commenced, and the tenants still reside in the rental unit on a month-to-month basis. Rent in the amount of \$650.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$325.00.

The landlord also testified that the rental unit is an apartment in a complex above a store. The tenants usually pay rent separately; one tenant's half is paid directly by a government ministry to the landlord, and the other tenant pays the landlord cash.

The landlord further testified that the tenancy agreement states that the tenants pay utilities, being hydro and telephone. Both of the utilities were in the landlord's name, but the tenants had requested that the landlord cancel the hydro so it could be put in the tenants' name, which was done on February 28, 2011. The landlord further testified that the tenants now owe \$325.00 for those utilities, which is a figure for accumulated arrears over time. The landlord, however, was not able to provide testimony or evidence as to when the arrears accumulated and how the landlord arrived at that figure, other than to say that the figure includes the \$50.00 filing fee for the cost of this application.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 1, 2011, a copy of which was provided by the tenants in advance of this hearing. The notice is dated October 1, 2011 and states that the tenants failed to pay rent in the amount of \$325.00 that was due October 1, 2011 and the tenants failed to pay utilities in the amount of \$206.21 following a written demand on October 1, 2011. The notice also contains an expected date of vacancy of October 12, 2011. The landlord testified that the notice was served on the tenants personally on October 1, 2011.

The landlord further testified that one of the tenants paid \$650.00 cash on October 26, 2011, which was \$325.00 for the October rental arrears and \$325.00 for November's rent. The other tenant's share was paid directly by the ministry, and now all of October and November's rent is paid. The landlord gave the tenants a receipt, but did not advise the tenants or write on the receipt that the amount was for use and occupancy only, and did not serve as a reinstatement of the tenancy.

The landlord also testified that the phone bill arrives after the first of the month, and the landlord received a new bill the day of this hearing, which covers service from October 19, 2011 to November 18, 2011. The tenant's share would be \$30.02, for which the landlord claims \$10.00 for a partial month. The total amount of utilities owing to date is \$216.21. The landlord cancelled the phone a few days ago, which includes internet.

### Analysis

The *Residential Tenancy Act* provides for a landlord to issue a notice to end tenancy on any day after the date rent is due. The tenants then have 5 days to pay the rent or apply for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move from the rental unit by that date. If the tenant does not move, the landlord may apply for an Order of Possession. In this case, the landlord accepted rent from the tenants after the effective date of the notice and has thereby reinstated the tenancy. If rent falls into arrears again, the landlord may issue a notice to end the tenancy, but will be found to have reinstated the tenancy if the landlord collects rent after the effective date of the notice unless the landlord makes it clear to the tenants that the rent collected is for use and occupancy only. However, the landlord may not accept rent for the following month and still require the tenants to move.

As for the unpaid utilities, I find that the landlord has failed to conclusively satisfy me of the amount of utilities remaining outstanding. The *Act* states that a landlord may issue a notice to end the tenancy if the utility charges are unpaid more than 30 days after the tenants are given a written demand for payment of them. The landlord is at liberty to issue another notice to end the tenancy if the landlord provides the tenants with a written demand.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply. The landlords' application is also dismissed.

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 03, 2011.

---

Residential Tenancy Branch