



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord: OPR, MND, MNR, MNSD, MNDC, FF  
Tenant: CNR, MNDC, MNSD, O

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only.

As these are cross Applications, I find that both parties have been sufficiently served with the notice of hearing documents and copies of their respective Applications pursuant to the *Act* for the purposes of this hearing.

While the landlord submitted some evidence with her Application when she applied for dispute resolution, she also submitted a substantial amount of additional evidence in 5 separate packages. The packages were served on January 30, 2012; January 31, 2012; February 1, 2012 and two packages on February 2, 2012.

The Residential Tenancy Branch Rule of Procedure #3.4 states that to the extent possible, the applicant must file copies of all available documents at the same time as the Application is filed. Rule 3.5 states that for documents not available to be filed with the Application, but which the applicant intends to rely upon must be served at least 5 days prior to the hearing.

I have reviewed these documents only to determine their content and have determined that all of the documents submitted by the landlord with the exception of a letter from the local government were available to the landlord when she filed her Application. Since all of this evidence was served within 5 days of the hearing, I find that it would be contrary to the above noted Rules of Procedure and therefore prejudicial to the tenant for me to consider this evidence for this decision and as such, I have not considered their content.

At the start of the hearing, the landlord testified the tenant had vacated the rental unit on January 31, 2011 and as such, there is no longer a need for an order of possession. I amend the landlord's Application to exclude the matter of possession.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; to a monetary order for damage or loss; and for all or part of the security deposit, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord testified the tenancy began on August 27, 2010 as a month to month tenancy for the current monthly rent of \$1,650.00 due on the 1<sup>st</sup> of each month with a security deposit of \$480.00 paid. The tenancy agreement required the tenant to pay for utilities.

The landlord testified the tenant failed to pay rent for the months of October, November, and December 2011 and January 2012. The landlord also noted the tenant failed to pay rent for February 2012.

The landlord also testified the tenant failed to pay the following utilities:

Water – November 30, 2010 -	\$174.42
March 29, 2011 -	\$289.20
July 27, 2011 -	\$297.89
November 25, 2011 -	\$274.97
Total	\$1,036.48 (tenant owes half)

Hydro – December 14, 2011 - \$295.55

Gas – December 15, 2011 - \$259.34

Total owed to landlord for utilities is \$1,073.13

### Analysis

In the absence of any testimony from the tenant disputing the landlord's claim, I find the tenant failed to pay rent for the months as outlined by the landlord, however as the tenant vacated the rental unit prior to February 1, 2012, resulting from the landlord's 10 Day Notice issued on January 10, 2012, I find the tenant is not responsible for the payment of rent of February 2012.

I also find that, in the absence of any testimony from the tenant disputing the landlord's claim the tenant is responsible for the payment of utilities as outlined above.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$6,073.13** comprised of \$4,950.00 rent owed; \$1073.13 utilities owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$480.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$5,593.13**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As the tenant failed to attend the hearing and provide any testimony regarding her claims and to cancel the notice, I dismiss the tenant's Application in its entirety without leave to reapply.

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: February 03, 2012.

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Residential Tenancy Branch