



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNDC FF  
                                 MT CNR MNDC

### Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking an Order to cancel the notice to end tenancy for unpaid rent and to obtain a Monetary Order money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement. The Tenant withdrew her request for more time as she has filed her application within the stipulated time frames.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the Act, sent via registered mail on June 6, 2012. Canada Post receipt numbers were provided in the Landlord's verbal testimony (0103826000350909). The Tenant argued that she has not received the Landlord's package. During the course of the hearing the tracking number was confirmed and the Tenant was advised that refusal to pick up registered mail does not avert or deny service and therefore the hearing would proceed as I was finding the Tenants to be sufficiently served notice of this proceeding in accordance with the Act.

The parties appeared at the teleconference hearing and the Landlord acknowledged receipt of evidence submitted by the Tenants. Both parties gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?
3. Are the Tenants entitled to a Monetary Order?

### Background and Evidence

The parties agreed they entered into a written fixed term tenancy that began on July 1, 2011 and was set to expire on June 30, 2012. Rent is payable on the first of each month in the amount of \$875.00 and no security deposit was required.

The Tenant affirmed receipt of the 10 Day Notice on May 25, 2012 and confirmed she found it that date taped to her door. She confirmed she has not paid rent for April, May or June and that she is still occupying the rental unit.

The Tenant stated that she has stopped paying her rent because she has had two broken showers in her rental unit. She confirmed she does not have an Order issued by the *Residential Tenancy Branch* giving her the authority to stop paying her rent.

The Tenant stated she is seeking monetary compensation because she has an outstanding hydro bill of \$1,122.40 and because her hydro has since been shut off. When she contacted hydro they told her that the account was in the Landlord's name and if she wanted it hooked up she would have to pay the outstanding balance.

The Landlord pointed to his evidence which included a copy of the tenancy agreement which he noted does not include electricity. He advised that the hydro account was in the previous tenant's name and he informed these Tenants at the beginning of their tenancy that they would be required to put the hydro in their own name. He is seeking an Order of Possession for as soon as possible and the monetary order to include \$400.00 outstanding for February 2012, plus full rent for April, May and June, 2012.

The Tenant disputed owing anything for February 2012 and confirmed she has not paid anything towards April, May or June 2012 rent.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

### **Tenant's Application**

The Tenant is seeking to cancel a 10 Day Notice to End Tenancy for unpaid rent however the Tenant has appeared at this hearing and confirmed she has not paid rent for April, May, or June 2012. The Tenant confirmed she does not have an Order from the *Residential Tenancy Branch* authorizing her from withholding rent.

Based on the aforementioned I find the Tenants to be in breach of section 26 of the *Act* which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement and the *Act*. Accordingly I dismiss the Tenants' request to have the 10 Day Notice cancelled.

The Tenants seek monetary compensation for the cost of hydro and because bathrooms are not in good working order. The Tenants did not submit evidence to support this claim; however the Landlord provided evidence which proves the tenancy agreement does not provide for electricity or hydro costs. Accordingly, I find there to be insufficient evidence to prove the Tenants' claim and therefore it is dismissed.

### **Landlord's Application**

**Order of Possession** - Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

The Tenants' application has been dismissed above and the Landlord appeared at the hearing and requested an Order of Possession effective as soon as possible. Accordingly, I award the Landlord an Order of Possession

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$400.00 for February 2012 and relies on his testimony to support this claim. The Tenant disputes owing anything for February 2012 rent.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove the Tenants failed to pay the full rent for February 2012. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof. Accordingly I dismiss the Landlord's claim of \$400.00 February 2012 rent.

The Landlord claims for \$1,750.00 unpaid rent which is comprised of \$875.00 for April 2012 and \$875.00 for May 2012; pursuant to section 26 of the Act which states a tenant must pay rent when it is due in accordance with the tenancy agreement. The Tenant admits not paying rent for April and May 2012.

Based on the aforementioned, I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Accordingly, I find the Landlords have met the burden of proof and I award them a monetary claim of **\$1,750.00** for April & May 2012 unpaid rent.

**Loss of rent** – The Tenant acknowledged receiving the 10 Day Notice on May 25, 2012, therefore the effective date of the Notice is June 4, 2012. Therefore I find the Landlord is seeking unpaid rent and loss of rent for June 2012 given that the Tenants have failed to pay June 1, 2012 rent and are still occupying the unit. The Landlord will not regain possession of the unit until after service of the Order of Possession and will therefore lose rent for June 2012.

Based on the aforementioned I find that the Landlord has succeeded in proving their loss, as listed above, and I approve their claim for **\$875.00** for rent & loss of rent for June 2012.

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlord has been awarded a Monetary Order for **\$2,675.00** (\$1,750.00 + 875.00 + 50.00). This Order is legally binding and must be served upon the Tenant.

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: June 20, 2012.

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Residential Tenancy Branch