



# 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 an application made by the landlord 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 landlord attended the conference call hearing, provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenants, and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on August 9, 2012, none of the tenants attended. The landlord provided evidence of having mailed the documents on that date and by that method, and I find that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

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

### Background and Evidence

The landlord testified that this tenancy began on November 1, 2011 with 4 tenants, 2 of whom moved out of the rental unit without the landlord's knowledge. The landlord learned of the change in tenants sometime in February, 2012 and agreed that another tenant could move in and a new tenancy agreement would be prepared. The parties also agreed at that time that rent would be reduced from \$1,300.00 per month to \$1,200.00 per month effective March 1, 2012. The remaining tenants and the additional tenant entered into a written fixed term tenancy agreement with the landlord on May 1, 2012. The fixed term expired on August 31, 2012 and the 3 tenants still reside in the

rental unit. A copy of the tenancy agreement was provided for this hearing, and it is signed by the landlord and the 3 tenants named in this application. Rent is payable on the 1<sup>st</sup> day of each month, and utilities are not included.

The landlord had collected \$650.00 from the tenants for a security deposit at the outset of the first tenancy and the landlord returned \$50.00 of that security deposit by way of rent reduction in order to ensure that the landlord did not hold more than half a month's rent. The landlord still holds \$600.00 in trust.

The landlord further testified that the tenants have been continually late with the payment of rent and utilities, which are in the landlord's name, and provided copies of the outstanding utility bills and numerous emails wherein the tenants promised to pay. However, the landlord testified that the tenants made partial payments, and provided a listing of payments due and payments made to the landlord, as follows:

Rent and Utilities Due:

- \$100.00 February, 2012 rent
- \$1,200.00 March, 2012 rent
- \$1,200.00 April, 2012 rent
- \$1,200 May, 2012 rent
- \$1,200.00 June, 2012 rent
- \$1,200.00 July, 2012 rent
- \$195.31 Natural Gas bill December, 2011
- \$346.38 Natural Gas bill February, 2012
- \$283.49 Natural Gas bill April, 2012
- \$127.13 Natural gas bill June, 2012
- \$7,052.31 TOTAL

Rent and Utilities Paid:

- \$400.00 March 30, 2012
- \$350.00 April 4, 2012
- \$1,200.00 May 1, 2012
- \$800.00 June 1, 2012
- \$300.00 June 18, 2012
- \$950.00 July 5, 2012
- \$185.00 July 6, 2012
- \$4,185.00 TOTAL

Difference: \$2,867.31

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 22, 2012 by posting it to the door of the rental unit. A copy of the notice was provided for this hearing, and it contains an effective date of vacancy of August 1, 2012. The notice also states that the tenants failed to pay rent in the amount of \$2,867.31 that was due on July 1, 2012. The landlord testified that the amount represented outstanding rent as well as outstanding utilities. The landlord has not been served with an Application for Dispute Resolution by the tenants.

The landlord requests an Order of Possession and a monetary order for \$2,867.31 as well as rent for the months of August and September, 2012 and recovery of the filing fee for the cost of this application.

### Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may serve the tenant with a notice to end tenancy in the approved form. The tenants must pay the rent in full within 5 days of service or deemed service or dispute the notice. If the tenants do neither within that 5 day period, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice which must be at least 10 days after service. In this case, I find that the landlord has provided a notice in the approved form and I accept that the tenants were served on July 22, 2012 by posting the notice to the door of the rental unit. The *Act* also states that documents served by that method are deemed to have been served 3 days after posting, and therefore I find that the tenants were deemed to have been served on July 25, 2012, and the effective date of vacancy is deemed, pursuant to Section 53 of the *Act*, to be changed to the earliest date that complies with the *Act*, being August 4, 2012. The tenants have not disputed the notice, and I therefore find that the tenants are conclusively presumed to have accepted that the tenancy ended on August 4, 2012 and the landlord is entitled to an Order of Possession.

With respect to the monetary order, I find that in the absence of any evidence or testimony to the contrary, the landlord has provided affirmed testimony that the tenants owe \$2,867.31 for overdue rent and utilities. I further find that the landlord is entitled to additional rent for the months of August and September, 2012 as well as recovery of the \$50.00 filing fee for the cost of this application. The landlord may keep the security deposit in partial satisfaction of the monetary amount owed by the tenants.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the security deposit of \$600.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* as against all 3 tenants jointly and severally in the amount of \$4,717.31.

These orders are final and binding on the parties and may be enforced.

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: September 05, 2012.

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Residential Tenancy Branch