



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenants – CNR, MNDC, OLC, ERP, SS, O

For the landlord – OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenants applied to cancel a Notice to End Tenancy, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, Regulation or tenancy agreement, for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for substitute service and other issues. The landlord applied for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent and utilities; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposits; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The parties had each asked two witnesses to attend. The parties decided not to call their witnesses to give evidence at the hearing. The landlord provided documentary evidence to the Residential Tenancy Branch in advance of this hearing and to the other party. However the tenants only provided evidence to the Residential Tenancy Branch and did not serve the landlord with a copy of their application or Notice of hearing.

### Preliminary Issues

The tenants are required to serve the landlord with a copy of their application and Notice of hearing. The tenants' testify that they tried to serve the landlord to an address given on the 10 Day Notice. The landlord confirms that this was a valid address for service and the tenants did not serve the landlord. The landlord's agent confirms verbally at the hearing that the address on the landlord's application is an address for service for the landlord.

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. By the tenants own admission that the landlord was not served with the hearing documents in accordance with the section 89 of the *Act*, Therefore I decline to hear the tenants application at the hearing today and the hearing continued with the landlords application.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent and utilities?
- Is the landlord entitled to a monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to keep the security and pet deposits?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agree that this tenancy started on July 14, 2012. This is a fixed term tenancy which is not due to expire until January 15, 2013. Rent for this unit is \$1,800.00 plus utilities. Rent is due on the 1<sup>st</sup> day of each month in advance. The tenants paid a security deposit of \$900.00 on July 13, 2012 and an agreement was made that the tenants could pay the pet deposit of \$600.00 in increment payments of \$100.00 each month. To date the tenants have paid \$150.00 towards the pet deposit.

The landlord's agent testifies that the tenants have failed to pay rent for September, 2012 of \$1,800.00. The landlord testifies that the tenants were served with a 10 Day Notice to End Tenancy on September 03, 2012; however, this notice was invalid as the landlord had not included an address for service. The landlord's agent testifies she served the tenants with an amended 10 Day Notice on September 03, 2012 with an address for the landlord. These Notices were served in person to one of the tenants. The landlord's agent testifies that she then served the tenants with another 10 Day Notice on September 13, 2012 by posting it to the tenants' door as the landlord had omitted to include unpaid utilities. The landlord's agent testifies that the amount of utilities was not recorded on the Notice in error.

The landlord testifies that the Notice informed the tenants that they owed \$1,900.00 in unpaid rent and this amount also included the \$100.00 the tenants were to pay towards the pet deposit. The Notice informed the tenants that they had five days to either pay the rent or dispute the Notice or the tenancy would end on September 13, 2012. The landlord's agent testifies that the tenants failed to pay the rent and have since failed to pay rent for October, 2012 of \$1,800.00.

The landlord's agent testifies that the tenants were supposed to have the utilities put in their name at the start of the tenancy and the landlords would pay a portion of the utilities while other tenants resided in the property. The tenants failed to do this and the landlord has had to pay utilities bills for the tenants. The landlord seeks to recover the sum of \$180.85 in unpaid utilities for September and \$85.00 in unpaid utilities for October. The landlord's agent testifies the tenants were left copies of the utility bills in

their mail slot and they had verbal discussions with the tenants about payment of these bills.

The landlord seeks an Order of Possession effective immediately and seeks a Monetary Order for unpaid rent and utilities, a Monetary Order for the landlord's costs for postage and photograph printing (amount not disclosed) and the filing fee. The landlord also seeks an Order to keep the tenants security and pet deposits.

The tenants dispute the landlords claim that the landlord served them with two copies of a 10 Day Notice on September 03, 2012. The tenants' testify the landlord only served them with the first copy of the Notice which was invalid as it did not have the landlords address on it. The tenants agree the landlord served them with another 10 Day Notice on September 13, 2012.

The tenants testify that the landlord told them they had to move out as the landlord was selling the property. The tenants' do not dispute that they have failed to pay rent for September and October, 2012.

The tenants testify that they did not put the utilities into their name as there were other people living in the property and the tenants did not want to be responsible for paying utilities for those other tenants. The tenants dispute that the landlords have provided them with any utility bills.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently due to the undisputed testimony of the parties I find that the tenants have failed to pay rent for September and October 2012 and the landlord is entitled to recover these rent arrears to the sum of **\$3,600.00**. The landlord has also included an unpaid portion of the pet deposit in this claim however as this is not considered to be rent no Order will be issued concerning repayment of this as it is a sum that is held in trust by the landlord until the end of the tenancy and I can only deal with the actual sums that were paid.

With regard to the landlords claim for utilities; the landlord has provided no documentary or corroborating evidence that shows the actual amount of the utility bills claimed or that the tenants were provide a copy of the bills with a written demand for payment within 30 days. In order to meet the burden of proof a landlord must provide sufficient evidence to support their claim. Consequently I dismiss the landlords claim for unpaid utilities with leave to reapply after the landlord serves the tenants with a copy of the utility bills and a written demand for payment within 30 days.

With regard to the landlords claim for an undisclosed amount for costs incurred for registered mail and photograph printing. There is no provision under the *Act* for me to award costs of this nature and they are deemed to be a cost of doing business as a landlord. Consequently the landlord's claim for money owed or compensation for damage or loss is dismissed without leave to reapply.

I Order the landlord to keep the tenants security deposit of **\$900.00** and the paid portion of the pet deposit of **\$150.00** pursuant to s. 38(4)(b) of the *Act* in partial satisfaction of the landlords claim. I further find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the **Act**. The landlord will receive a Monetary Order for the following amount:

Outstanding rent	\$3,600.00
Less security and pet deposit	(-\$1,050.00)

Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$2,600.00</b>

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 notice is deemed to have been received by the tenants on September 16, 2012 (three days after posting to door) and the effective date of the notice is amended to September 26, 2012 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act*. I accept that the tenants did file an application to cancel the Notice within five days however as the tenants failed to serve the landlord with a copy of their application this portion of their application is dismissed without leave to reapply.

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 pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,600.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord 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.

The landlord's application for unpaid utilities is dismissed with leave to reapply.

The tenant's application to cancel the 10 Day Notice to End Tenancy is dismissed without leave to reapply.

Of the balance of the tenants' application as the tenancy will end I dismiss the tenants' application for for an Order for the landlord to comply with the *Act*, Regulation or tenancy agreement, for an Order for the landlord to make emergency repairs for health or safety reasons without leave to reapply.

I dismiss the tenants application with leave to reapply for a Monetary Order for money owed or compensation for damage or loss and for a substitute service order if the tenants do reapply and are unable to serve the landlord at the address confirmed by the landlords agent at the hearing today.

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: October 25, 2012.

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Residential Tenancy Branch