



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MND, MNR, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants, and one brought by the landlord. Both files were heard together.

First of all it is my decision that I will not deal with all the issues that the applicants have put on the applications. For claims to be combined on an application they must related.

Not all the claims on these applications are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the tenant's application to cancel a Notice to End Tenancy, and the request for recovery of the filing fee, and I will deal with the landlord's application for an Order of Possession, the request for outstanding rent, and recovery of the landlords filing fee. I dismiss the remaining claims with liberty to re-apply.

### Background and Evidence

The tenants have been served with two Notices to End Tenancy. A one-month Notice to End Tenancy was placed in the tenant's mailbox on March 25, 2013, and a 10 day Notice to End Tenancy was placed in the tenant's mailbox on April 3, 2013.

#### 10 day Notice to End Tenancy

The landlord testified that:

- Rent is \$1495.00 per month; however rent is reduced by \$100.00 per month to \$1395.00 if rent is paid in full before the first of the month.
- The tenants had an order allowing them to deduct \$50.00 from the April 2013 rent, and therefore the tenants should have paid \$1445.00, or \$1345.00 if paid early.
- The tenants however only paid \$1264.00 for the month of April, leaving \$181.00 still outstanding, as they would not qualify for the rent reduction since the rent was not paid in full.
- They therefore served a 10 day Notice to End Tenancy for outstanding rent, on April 3, 2013, and requested an Order of Possession be issued based on that notice.

The tenant testified that:

- They have always paid \$1482.00 rent per month, and since they've never received a copy of the tenancy agreement they were unaware that the rent was \$1495.00. If rent was \$1495.00, why has the landlord always accepted \$1482.00 per month.
- Therefore for the month of April 2013 they deducted the \$50.00 allowed in a previous dispute resolution hearing, and they deducted a further \$66.00, because the landlord stopped supplying cable television and gave them a letter stating they could deduct \$33.00 per month for loss of that cable starting March 2013.
- Therefore the amount they paid is as follows:

April 2013 rent	\$1482.00
Deduction allowed from previous dispute resolution	-\$50.00
Loss of cable for March 2013 in April 2013	-\$66.00
Less \$100.00 for paying early	-\$100.00
Total	\$1266.00

- They made a calculating error of \$2.00, and mistakenly paid \$1264.00.
- Therefore, other than the minor \$2.00 calculating error, they believe the rent is paid in full, and they therefore ask that the Notice to End Tenancy be canceled.

In response to the tenant's testimony the landlord testified that:

- As stated previously the rent for this unit has always been \$1395.00 with an increase of \$100.00 per month for each extra occupant.
- Therefore since the tenant's daughter has moved into the rental unit, the monthly rent is now \$1495.00.
- The reason the tenants have been paying \$1482.00 per month is because the tenants have been getting a \$100.00 per month rent reduction for paying the rent early, bringing the rent to \$1395.00. However the tenants have also been paying their share of the utilities monthly and their share of the cable/Internet and therefore the total monthly payment is as follows:

Basic monthly rent	\$1395.00
Increase rent for extra occupant	\$100.00
Tenants share of utilities	\$54.00
Tenants share of cable/Internet	\$33.00
Subtotal	\$1582.00
Less rent reduction for paying rent early	-\$100.00
Total monthly payment	\$1482.00

- Therefore for the month of April, if the tenants paid early, they should have paid as follows:

Usual monthly payment	\$1482.00
Less amount ordered in previous dispute resolution hearing	-\$50.00
Less reduction for cable loss for March 2013 and April 2013	-\$66.00
Total	\$1366.00

The tenants however only paid \$1264.00, and therefore since the full amount was not paid, they also do not qualify for the \$100.00 rent reduction, leaving a difference of \$202.00.

In the calculation for today's hearing however we did not take into consideration any amount for utilities or cable, we simply took the base amount of rent at \$1495.00, and deducted the \$50.00 award from the previous hearing, leaving \$1445.00 that we

believed was outstanding, and since the tenants only paid \$1264.00 that left a difference of \$181.00, not including any utilities still owed for the month of April 2013.

### Analysis

It is my finding that the landlords have shown that the base rent for this unit is \$1395.00 per month, and that that amount increases by \$100.00 per month for an extra occupant, and therefore since the tenant's daughter is living in the rental unit with them, the monthly rent is now \$1495.00.

Further it is also my finding that the landlords have shown that the tenants are responsible for 50% of the utilities, and were until March 1, 2013 responsible for 33% of the cable and Internet costs and I accept that the landlord has been billing the tenant \$54.00 per month for utilities, and \$33.00 per month for cable/Internet.

The landlord has admitted however that the tenants are no longer required to pay the \$33.00 cable/Internet charge as of March 1, 2013.

Therefore the calculation of the monthly rent/utilities as of March 1, 2013 are as follows:

Basic monthly rent	\$1395.00
Increase rent for extra occupant	\$100.00
Utility costs	\$54.00
Total	\$1549.00

Therefore if the tenant paid the April 2013 rent early, the tenant should have paid as follows:

Total from above	\$1549.00
Less discount for paying early	-\$100.00
Less deduction allowed in previous arbitration	-\$50.00
Less rebate of cable TV fee paid in March 2013	-\$33.00
Total	\$1366.00

Therefore since the tenant only paid \$1264.00, there is a shortfall \$102.00, and since the tenant did not pay the full amount of rent early, the tenant does not qualify for the \$100.00 discount, leaving a difference of \$202.00 shortfall in rent and utilities.

In the landlord's calculations for today's claim, the landlord did not include the utilities charge of \$54.00, nor did the landlord deduct the \$33.00 cable/Internet overpayment for the month of March 2013, and that is how she arrived at the figure of \$181.00.

Therefore it is my finding that the tenant has not paid the full rent, and at this time after deducting the \$33.00 March 2013 cable/Internet overpayment, there is still a total of \$148.00 in rent outstanding, and \$54.00 in utilities outstanding.

I therefore will not set aside the 10 day Notice to End Tenancy, and I allow the landlords request for an Order of Possession.

I also allow the request for the outstanding rent and recovery of the filing fee.

I make no order regarding the outstanding utilities, as the landlord did not apply for utilities on her application for dispute resolution.

#### One-month notice to end tenancy

Since this tenancy is ending pursuant to the 10 day Notice to End Tenancy, there is no need for me to make a finding on the validity of the one-month Notice to End Tenancy.

#### Conclusion

##### Landlord's application

I have issued an Order of Possession to the landlord for 1 PM on April 30, 2013.

I have issued a Monetary Order for outstanding rent totaling \$148.00, plus the \$50.00 filing fee, for a total of \$198.00.

The landlord's claims for \$1000.00 insurance deductible, and for loss rental revenue for May 2013 are both dismissed with leave to reapply.

##### Tenant's application

The tenant's application to cancel the Notices to End Tenancy is dismissed without leave to reapply and I order that the tenants bear the \$50.00 cost of the filing fee they paid.

The \$10,000.00 monetary portion of the tenants claim is dismissed with 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: April 24, 2013

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Residential Tenancy Branch

