



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MT, OPR, OPC, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled for 3:00 p.m. on today's date, via teleconference call, to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and more time to make their Application. The landlord applied for an order of Possession for unpaid rent and cause as well as a Monetary Order for unpaid rent and utilities; loss of rent; and, authorization to retain the security deposit. The tenants did not appear at the hearing despite leaving the teleconference call open until 3:30 p.m. The landlord appeared at the hearing and confirmed receiving the tenants' Application for Dispute Resolution. The landlord testified that she served each tenant, in person, with the landlord's Application for Dispute Resolution and evidence on April 14, 2013 and April 29, 2013.

The landlord testified that the tenants vacated the rental unit on or about April 30, 2013.

In light of the above, I considered the tenants' application to be abandoned by the tenants and I dismissed their application. I also found it unnecessary to consider the landlord's requests for an Order of Possession as the landlord has already regained possession of the rental unit.

As I was satisfied the landlord sufficiently served each of the tenants with the landlord's hearing documents I continued to hear from the landlord with respect to her monetary claims against the tenants.

### Issue(s) to be Decided

1. Is the landlord entitled to monetary compensation from the tenants for unpaid rent, loss of rent, unpaid utilities, and a late fee, in the amounts claimed?
2. Is the landlord authorized to retain the tenants' security deposit?

### Background and Evidence

The one year fixed term tenancy commenced in May 2012 and the landlord collected a security deposit of \$362.50. At the end of the fixed term the tenancy was to continue on a month-to-month basis. The tenants were required to pay rent of \$725.00 on the 1<sup>st</sup> day of every month and were responsible for paying the landlord 50% of hydro and water bills. The landlord confirmed that she gave the tenants copies of the utility bills.

One-half of the rent due for April 2013 was received from Income Assistance. The landlord issued a 1 Month Notice to End Tenancy for Cause on April 1, 2013 and posted it on the tenants' door. The tenants did not pay the other half of the rent due for April and on April 2, 2013 the landlord personally served the female tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. After receiving the 10 Day Notice the tenants did not pay the outstanding rent.

In addition to the unpaid rent for April 2013 the landlord is seeking to recover 50% of a \$577.72 hydro bill issued April 3, 2013 and 50% of a \$223.00 water bill issued March 15, 2013. The landlord is also seeking loss of rent for the month of May 2013 as the unit remains vacant and a late fee of \$25.00 for the month of April 2013. The landlord testified that the tenancy agreement signed by the tenants provides for a late payment administrative fee of \$25.00.

Documentary evidence provided for this proceeding includes copies of: the 1 Month Notice; the 10 Day Notice; a statement of rent and utilities issued by the landlord on April 1, 2013; the subject hydro bill and water bill; and, numerous text message communications between the parties. I was also provided photographs of the 1 Month Notice posted to the tenants' door and damage to a wall in the laundry room.

### Analysis

Under the Act, a tenant is required to pay rent when due under the terms of their tenancy agreement even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold the rent payable.

Based upon the undisputed evidence before me, I accept the landlord's submissions that the tenants failed to pay \$362.50 of the rent owed for April 2013 and I award the landlord unpaid rent of \$362.50 for the month of April 2013.

I also accept the landlord's undisputed testimony that the written tenancy agreement provides for a late payment fee of \$25.00. As the tenants failed to pay all of the rent when due for April 2013 I award the landlord the late payment fee as requested.

Based upon the undisputed evidence before me, I find the tenants breached the Act by not paying rent when due, did not vacate the rental unit when required pursuant to the 10 Day Notice, and did not give sufficient notice to end the tenancy as provided under the Act. I note that the tenants indicated to the landlord in their text message communication that they were disputing the Notice to End Tenancy, which was set for hearing on May 8, 2013, and that it was not until April 21, 2013 that they indicated to the landlord that they had found a new place to live. I also satisfied the landlord made reasonable efforts to show the unit to prospective tenants as evidenced by text messages about showing the unit and the landlord's testimony that she showed the unit in late April 2013. Therefore I grant the landlord's request for loss of rent for May 2013 in the amount of \$725.00.

Upon review of the hydro and water bills, and based upon the landlord's undisputed testimony, I accept that the tenants owe the landlord 50% of the \$577.72 hydro bill and 50% of the \$223.00 water bill and I award the landlord \$400.36 for these bills.

Given the landlord's success with her Application, I further award the landlord the filing fee she paid for her application.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: April 2013	\$ 362.50
Late fee: April 2013	25.00
Utilities	400.36
Loss of Rent: May 2013	725.00
Filing fee	50.00
Less: security deposit	<u>(362.50)</u>
Monetary Order	\$1,200.36

To enforce the Monetary Order it must be served upon the tenants. It may also be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,200.36 to serve and enforce as necessary.

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: May 08, 2013

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Residential Tenancy Branch