



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an order of Possession for unpaid utilities and a Monetary Order for unpaid utilities, loss of rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt as proof the hearing documents were sent to the tenant on April 12, 2013. The landlord confirmed that the documents were sent to the tenant at the rental unit address and that the tenant continues to occupy the rental unit. I was satisfied the landlord served the tenant with notification of this proceeding in a manner that complies with the Act and I continued to hear from the landlord in the absence of the tenant.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
2. Is the landlord entitled to a Monetary Order in the amount claimed for unpaid utilities and loss of rent?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced December 1, 2012 and the tenant paid a security deposit of \$400.00. Pursuant to a written tenancy agreement the tenant is required to pay rent of \$800.00 on the 1<sup>st</sup> day of every month for a fixed term of one year, plus 40% of the hydro bills.

The landlord testified that the hydro bills were in the name of the upstairs tenant and that the landlord compensated the upstairs tenant since the tenant did not pay her share of the hydro bills. The landlord testified that the tenant has not paid any portion of the hydro bills received since the tenancy commenced despite the landlord sending the

tenant copies of the bills (including the calculation of the tenant's share) via email, text message, and registered mail.

On March 26, 2013 the landlord sent three 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notices) to the tenant via registered mail. The 10 Day Notices indicate the tenant failed to pay \$208.00; 132.53 and 72.93 in utilities that were demanded in writing on February 10, 2013. The landlord confirmed that the tenant was given both pages of the 10 Day Notices.

The tenant did not file to dispute the 10 Day Notices and did not pay the outstanding utilities.

The landlord's claim for compensation in the amount of \$2,413.46 is the sum of: the unpaid utilities indicated on the 10 Day Notices; loss of rent for the months of May and June 2013; plus, the security deposit. The landlord confirmed that the tenant did not pay any rent for the month of May 2013 and has not yet returned possession of the unit to the landlord.

As evidence for this proceeding the landlord provided copies of: the 10 Day Notices issued March 26, 2013; registered mail receipts; and, two hydro bills issued January 17, 2013 and February 28, 2013.

### Analysis

Under the Act, a landlord may treat unpaid utilities as unpaid rent if the tenant fails to pay the utilities within 30 days of receiving a written demand. Where a tenant does not pay rent or utilities the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or utilities to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or utilities or does not file to dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the undisputed evidence before me that the landlord sent three 10 Day Notices to the tenant via registered mail on March 26, 2013. As the 10 Day Notices were mailed to the tenant it is deemed to be received five days later on March 31, 2013, pursuant to section 90 of the Act. Accordingly, the effective date of the Notices automatically

changes to comply with the Act and read April 10, 2013 pursuant to sections 46 and 53 of the Act

Since the tenant did not pay the outstanding utilities or file to dispute the 10 Day Notices within five days of receiving the Notices I find the tenancy ended on April 10, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid utilities as indicated on the 10 Day Notices or \$413.46 and I award the landlord that amount. As the tenant did not vacate the rental unit when required to do so and has occupied the rental unit in the month of May 2013 I further award the landlord loss of rent for the month of May 2013. I find the landlord's claim for loss of rent for June 2013 to be premature as the landlord has not yet incurred a loss for June 2013 and I dismiss that portion of the landlord's claim with leave to reapply.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Utilities: per 10 Day Notices	\$ 413.46
Loss of Rent: May 2013	800.00
Filing fee	50.00
Less: security deposit	<u>(400.00)</u>
Monetary Order	\$ 863.46

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$863.46 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