



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR OPR RP ERP RR PSF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To allow the tenant to reduce rent for repairs not done and for facilities not provided;
- d) For a monetary order as reimbursement for repairs;
- e) To obtain a rebate of rent for overpaid utilities; and
- f) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated March 3 to be effective April 13, 2013 and the tenants confirmed it was served personally on them on April 1, 2013. The tenant /applicants gave evidence that they served the Application for Dispute Resolution dated April 5, 2013 by registered mail and the landlord agreed he received it. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is unpaid rent or has the tenant demonstrated that the notice to end tenancy should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that costs for hydro are owed to him and/or that the landlord through act or neglect has caused the suite not to be maintained? If so, what is the amount of the hydro cost and/or damages owed to the tenant?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was a contentious hearing and a large amount of documentary evidence was submitted by the tenant. The tenant is claiming \$1709.60 in unpaid hydro bills in a shared utility and \$2,000 for aggravated damages, costs and additional hydro. The undisputed evidence is that the tenancy commenced in November 2010, the rent on the lease was \$750 a month plus \$100 for utilities and a security deposit of \$425 was paid in November 2010. After the lease was signed, the tenant said he agreed to changes in the utility arrangements with the upstairs tenant. He agreed to pay 50% of the utilities, then he agreed to put the gas bill in his name but almost immediately agreed to put the hydro bill in his name instead on the request of the upstairs tenant. The understanding was that each tenant would pay the utility in his name and after calculation, the bills would be equalized between them.

The landlord served a Notice to End Tenancy for unpaid rent. The tenant agreed in the hearing that he had not paid half of the rent (\$375) in February 2013 and not paid rent at all in March, April or May (\$750 x 3). He said he withheld the rent because the utilities are divided disproportionately and the upstairs tenant has not reimbursed him for the hydro bill. He said he discussed the utility bills with the landlord but reached no agreement.

The tenant provided copies of the utility bills and summaries and in the hearing; he noted the correct summary was page 15 of 61 of his evidence. In it, he shows he paid \$6416 in electric bills and the upstairs tenant paid \$3212.53 in gas bills. He states that he should owe \$1606.26 (50%) of the gas bill but that his portion of the electric bill should only be \$2657.49 (not 50% which would be \$3208.03) as he had less persons living in his unit since September 2012 and the upstairs tenant had Christmas lights and utilities running in a coop which used up extra hydro. The landlord said the utility payments were between the tenants and the downstairs tenant has more than three people there now. The landlord had a copy of the calculations of the tenant and did not dispute this evidence.

The tenant and his witnesses also claim that the suite is unreasonably cold and also damp because of several floods from upstairs; it has plumbing problems, no thermostat, no locks on the windows, dirty carpets and no smoke alarms. He requests repairs be done. He said that there was no condition inspection report done at move-in as on visual inspection the unit seemed adequate for his needs. He also requests aggravated damages against the landlord.

The landlord denied the allegations of the tenant, said he saw no sign of floods and he did all repairs on request. He saw no ruined ceiling tiles. For example, he said he fixed

the hot water in the small bathroom and did a dryer repair; the tenant did not dispute this statement of the landlord. On the issue of the heat, the landlord pointed to the inconsistent statements on page 3 of the tenant's evidence where he mentions the heat was overbearing and said that when the tenant complained once that it was cold, he visited them and the suite was comfortable. The tenant agreed that the heat had been extreme in the night and he had asked the landlord to request the upstairs tenant turn it down, he said it did not need to be 90% at night but it is cold in the morning. The landlord said the tenant had manually turned the furnace off on some occasions and the upstairs tenant had complained. He said the heat is not up and down, it is set. A witness for the tenant said he found the unit uninhabitable and wrote a letter as evidence.

Included with the evidence is a copy of the Notice to End Tenancy, the lease, utility bills and written statements by the tenants and witnesses.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

Section 26 of the Act states that a tenant must pay rent when it is due whether or not the landlord complies with his obligations, unless the tenant has a right under the Act to deduct all or a portion of the rent. I find the rent owed is \$1875 to the end of April 2013 plus \$750 for May 2013. I find the weight of the evidence is that the tenant had no authority under the Act to withhold his rent from the landlord; therefore I confirm the Notice to End Tenancy and find the landlord entitled to an Order of Possession.

In respect to the ongoing dispute over the utility bills between the upstairs and downstairs tenants, I find the tenant initially agreed to pay \$100 a month for his utilities. However, in his written evidence and in the hearing, he confirmed that he subsequently agreed to split the utility bills for hydro and gas on a 50% basis with the upstairs tenant and he put the hydro bill in his name and the upstairs tenant put the gas bill in his name. On reviewing the bills and summary, I find the bills do not relate exactly to the summary as there were many bills unpaid for several months, late payment charges, reconnect charges and security deposits on them. However, the tenant gave sworn testimony that the summary is an accurate account of the utility bills, he had discussed this with the landlord and the landlord did not dispute the accuracy of the tenant's account in writing or in the hearing. Therefore, I rely on the tenant's summary of the bills noted on page 15 of 61 of the evidence. I find this tenant's portion of the gas bill is \$1606.26 and the upstairs tenant's portion of the hydro bill is \$3208.03 (50% of \$6416.07).

Although the tenant gave evidence that he proposed that he only pay 25% of the utility starting in September 2012, there is no evidence that the other parties ever agreed to this change. Therefore, I find the last agreement of the parties to 50% shared utilities is the effective split. On this basis, I find this tenant is owed \$1601.77 by the upstairs tenant for hydro \$3208.03 - \$1606.26 (which is this tenant's portion of the gas bill).

Policy Guideline 1-9 of the Act provides that when there is a shared utility service and a tenant with a bill in his name is not reimbursed by the other tenant for their share, the tenant whose name is on the bill may claim against the landlord for the other tenant's share of the unpaid bill. However, it does not authorize the tenant to deduct it from rent owing until an application is made and the matter decided. I find here that the landlord must reimburse the tenant in the amount of \$1601.77 for the unpaid portion of the hydro bill.

I find that the tenant lost hot water for about 23 days due to the failure of the upstairs tenant to pay the gas bills on time. Maintaining an essential facility such as hot water is the responsibility of the landlord, even if he assigns responsibility for bill payment of shared utilities. Therefore, I find the tenant entitled to a deduction of \$100 for the loss of hot water for a period of time.

I dismiss the other claims of the tenant for repairs as most of the problems appear to have arisen from disputes with the upstairs tenant over heat and other matters and the question of repair is now moot as the landlord has obtained an Order of Possession. I also find insufficient evidence on the balance of probabilities that the landlord through act or neglect caused the tenant's living conditions to be not maintained to the point of being uninhabitable. I find insufficient evidence that the landlord refused to repair as necessary. Therefore I dismiss the tenant's claim for aggravated damages and I find the landlord acted in a reasonable manner. I found the landlord's evidence more credible that he performed repairs when requested as his evidence is supported by the tenant's agreement that the landlord did fix the small bathroom issue and did visit the suite to gauge the heat when he made a complaint. I found the tenant's evidence somewhat inconsistent as in written statements, he claimed the unit was too hot and requested the heat be turned down and then he and his witnesses complained of it being too cold. The testimony also was that he found the unit adequate on visual inspection yet his visitor said it was "uninhabitable".

As the tenant owes \$2525 in rent, I authorize the tenant to deduct the unpaid portion of the hydro bill plus \$100 rebate plus \$50 for the filing fee from rent owing. This leaves \$773.23 rent owed to the landlord (\$2525-1601.77- 150). If the landlord wishes a monetary order for rent owing or to retain the security deposit, the landlord must make

his own application. Under section 38 of the Act, the security deposit must be refunded or claimed in an application within 15 days of the later of the tenant vacating and providing his forwarding address to the landlord.

**Conclusion:**

I confirm the Notice to End Tenancy. The tenancy is at an end and I find the landlord entitled to an Order of Possession effective two days from service.

I find the tenant entitled to deduct hydro costs of \$1601.77 plus rebate and filing fee of \$150 from rent owed to the landlord which leaves a balance owing of \$773.23 including rent for May 2013. I dismiss all other claims of the tenant in their entirety without 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: May 02, 2013

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Residential Tenancy Branch