



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON CENTRE REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy dated June 6, 2013 given for an alleged non-payment of \$600.00 in utility charges. It also seeks a monetary award for the unpaid utilities.

It appears the landlord is the applicant realty company and that the second applicant Ms. A. F. is merely an employee of the landlord.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenancy has ended as a result of the Notice or that the tenant owes the landlord money for unpaid utilities.

### Background and Evidence

The rental unit is a two bedroom basement suite in a house. The upstairs of the house is rented to another; Mr. D.L.. This tenancy started in April 2010. The monthly rent is presently \$850.00. The landlord holds a \$425.00 security deposit.

The landlord, this tenant and the upstairs tenant have been engaged in what appears to be ongoing disputes since at least mid-2012. In addition to this application, I have come across file #s involving at least one of the two rental units. The disputes appear to emanate from disputes between the upstairs and downstairs tenants and from the landlord's unfortunate decision to impose the job of payment of utility costs on the upper tenant with a direction that the upper tenant collect the lower tenant's share directly.

The original tenancy agreement with the applicant tenant (a copy of which was not filed for this application) appears to impose an obligation on him to pay 25% of the utilities to

the upstairs tenant. From the other decisions in this matter it appears that the upstairs tenant was obliged to put the utility services in his name and collect the lower tenant's share directly. As has been pointed out by the very first arbitrator to hear these matters in June 2012, such an arrangement is likely unconscionable and unenforceable.

In a decision rendered June 18, 2012 under file, pursuant to an application by the upper tenant Mr. D.L., Arbitrator determined that the landlord had to reimburse him for the lower tenant's 25% share of the utilities, an amount of \$567.42 at that time. She also determined that the landlord could make a claim against this tenant for that amount. Further, Arbitrator expressed the opinion that if the lower tenant had a co-occupant sharing the rental unit with him, he should properly pay 40% of the utilities.

On June 6, 2013 the landlord issued a ten day Notice to End Tenancy for unpaid utilities demanding the amount of \$600.00. The tenant applied to cancel that Notice. The hearing came on before Arbitrator on July 11, 2013. Her decision indicates that the landlord informed her that matters the tenant applied for were the subject of another proceeding to be heard on July 19, 2013. As the amount of utilities owing, if any, was apparently to be determined at the July 19<sup>th</sup> hearing, she determined that she was unable to decide whether the Notice was valid or not. She dismissed the tenant's application.

The July 19<sup>th</sup> hearing was the final continuation of a battle involving the landlord defending against the combined applications of both tenants (file #s and). Arbitrator reasons in that dispute do not indicate that the ten day Notice to End Tenancy for unpaid utilities dated June 6, 2013 was in issue in that proceeding. The Arbitrator made a binding finding of fact that the applicant tenant Mr. A.S. did not pay any utility bills and that he was provided with copies of the utility bills. However, the Arbitrator makes no finding about what, if anything, the applicant tenant Mr. A.S. owed.

### Analysis

At this hearing the tenant Mr. A.S., who asserted that he should be addressed as "master" not "mister" gave evidence that he had no receipts to contribute because the others wouldn't give him any and that he always paid cash so had no records of his own. He has no bank account because, he says, Canadian banks are not licensed to bank in Canada. He is a plumber by trade and says he is not short of money. He says with pride that he pays no income tax, neither charges or collects GST or PST and even pays his physician, a Dr. Grant, cash for medical services. He seems to reject the authority of the landlord and wishes to deal directly with "Dave" the owner.

I have little faith in the testimony of one who is so carefree about the laws of our nation.

At the same time, the landlord has failed to provide cogent evidence to prove what, if anything, the tenant owes for utilities and who it is owed to: the landlord or the upper tenant. I have unearthed and read the June 18, 2012 decision of Arbitrator in file indicating the landlord could claim against the tenant for the \$567.42 it had to pay to the upper tenant, but that decision was not a binding finding of fact against this tenant, Mr. A.S., that he owed the landlord that much money. It could not be a binding finding because this tenant was not a party to that proceeding and was not given an opportunity to be heard at that hearing. It fell to the landlord to prove at this hearing what if anything the tenant owed for utilities and that the tenant owed that money to the landlord and not to the upstairs tenant under the written tenancy.

In result, the landlord's claim to recover \$600.00 in unpaid utilities must be dismissed.

I find I must also dismiss the landlord's claim for an order of possession. The tenant challenged the June 6, 2013 ten day Notice to End Tenancy by bringing his application to cancel it. Arbitrator stated she could not make a decision about whether the ten day Notice was valid or not. That question has not been decided by the date of this application. As of the date of this hearing, the Notice has been challenged and that challenge has not been decided. Perhaps it was a matter that Arbitrator should have decided but neglected. That is far from clear on the record, but the landlord is free to apply for a correction of that decision if a matter should have been adjudicated upon but was omitted (s. 78(1)(c) of the *Residential Tenancy Act*.

### Conclusion

The landlord's application is dismissed.

The evidence satisfies me that the tenant has not made contribution to the utilities since at least August 2012. By virtue of technicalities and the landlord's confusion arising from competing disputes over the last year and more, he has sidestepped having a direct order made against him in this application. I draw the parties' attention to the fact of an agreement that the lower tenant is to pay 25% of the utilities and the opinion of Arbitrator, an opinion with which I agree, that if there is an additional occupant in the lower suite the lower suite should pay 40% of the utilities.

I strongly suggest that the parties reach agreement that the tenant is now to pay the landlord his share of utilities: 25% or 40% as the case may be, once a utility bill has been presented to him for payment of his share.

If the tenant and landlord cannot come to agreement I suggest the landlord apply for a monetary award or rent increase against this tenant on the basis that it has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property incurred by the unenforceability of the existing utilities clause in the written tenancy agreement and resultant reimbursement of the upper tenant for payment of lower tenant's share of the utility costs.

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: August 27, 2013

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Residential Tenancy Branch

