



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR, MNDC, FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent, loss of income, utilities and the filing fee. The tenant applied to cancel the notice to end tenancy and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord initially served the tenant with a notice to end tenancy for nonpayment of utilities. The tenant applied to dispute the notice. The landlord had served this notice without giving the tenant 30 days notice by way of a written demand to pay outstanding utilities and therefore this notice dated September 01, 2013 was invalid. Accordingly the tenant's application to cancel this notice is moot.

The tenant did not pay rent for September and therefore on September 10, 2013, the landlord served the tenant with a ten day notice to end tenancy for nonpayment of rent. The landlord made this application pursuant to the second notice to end tenancy dated September 10, 2013.

The tenant moved out on September 30, 2013. Since the landlord has possession of the unit, an order of possession is not necessary. Therefore, this hearing only dealt with the monetary claims of both parties.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover unpaid rent, loss of income, cost of utilities and the filing fee? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on October 01, 2011 for a fixed term of 5 years. The monthly rent is \$2,000.00 payable on the first of each month. The landlord filed a copy of the tenancy agreement. The terms of this agreement indicate that the cost of water and sewage disposal is not included in the rent.

The tenants agreed that rent for September was not paid and that they did not formally notify the landlord of their plans to move out at the end of September. The tenants stated that the landlord knew that they were moving out when he saw the packed boxes during his visit to the rental unit. The landlord is claiming rent for September 2013 (\$2,000.00) and loss of income for October 2013 (\$2,040.00).

The landlord stated that the rent was increased by \$40.00 in October pursuant to a hand written term in the tenancy agreement. The landlord agreed that he had not used the approved form to notify the tenants of this increase and had not given the tenant notice of the increase, three months prior to the start of the increased rent.

The landlord has made a claim for the cost of water and sewage disposal for the entire term of the tenancy. Except for one payment made at the landlord's request in August 2012, the tenants were not asked to make any other such payments. The tenants stated that they were unaware of their responsibility to cover these costs and the landlord did not enforce any payments until the landlord served them a notice to end tenancy for non payment of utilities on September 01, 2013.

### **Analysis**

#### **Landlord's application:**

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In this case the tenant failed to pay rent for September and therefore owes the landlord \$2,000.00.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non –compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, the tenant moved out on September 30, 2013 giving the landlord insufficient time to find a tenant for October 01, 2013. However, the landlord did not file any evidence of having made attempts to find a tenant, after the tenant moved out, by advertising and/or showing the unit during the first two weeks of October. For this reason, I award the landlord loss of income for the first half of October and the landlord's claim for loss of income beyond October 15 is dismissed.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Regarding the payment of water and sewage disposal, Clause #8 in the tenancy agreement provides that these items are not included in the rent. The total amount claimed in the landlord's application is calculated on the basis of the utility bills for the entire term of the tenancy.

Following from the landlord's failure to collect the cost of water and sewage disposal in a timely fashion, or shortly after each of the occasions when it became due, pursuant to the doctrine of laches, I find that this aspect of the landlord's application must hereby be dismissed.

Since the landlord has established most of his claim, I award him the recovery of the filing fee of \$50.00.

Overall I find that the landlord has established a claim of \$2,000.00 for rent for September, \$1,000.00 for loss of income for October and \$50 for the filing fee for a total of \$3,050.00.

#### Tenant's application

Since the landlord issued a notice that was not compliant with section 46(6) of the *Residential Tenancy Act*, I find that the tenant is entitled to the recovery of the filing fee paid to dispute this notice.

Overall the landlord has established a claim of \$3,050.00 and the tenant has established a claim of \$50.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$3,000.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

#### Conclusion

I grant the landlord a monetary order for **\$3,000.00**

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: October 18, 2013

---

Residential Tenancy Branch

