



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KELLER WILLIAMS VALLEY REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, OPR, MNR, MNSD, FF

### Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause and Orders for the landlord to comply with the Act, regulations or tenancy agreement. The landlords applied for an Order of Possession for unpaid rent; and, a Monetary Order for unpaid rent and utilities. The tenant did not appear at the hearing.

The landlord confirmed receiving the tenant's Application. Since the tenant did not appear at the hearing I dismissed the tenant's Application without leave.

The landlord's agent testified that the Landlord's Application for Dispute Resolution and evidence were sent to the tenant at the rental unit via registered mail on October 22, 2013 and that at the time of mailing the tenant was residing at the rental unit. The landlord provided a registered mail receipt, including tracking number, as proof of service. Section 90 of the Act deems a person to have received documents five days after mailing even if the person refuses to pick up or accept the registered mail. Accordingly, I found the tenant sufficiently served with the landlords' hearing documents and I continued to hear from the landlords without the tenant present.

### Preliminary and Procedural Matters

The tenant had named two individuals as the landlords; whereas, the Landlord's Application included a realty company as a named landlord. I heard that that after serving the tenant with the 1 Month Notice the owners engaged the realty company to act as agent for the owners. I am satisfied the realty company meets the definition of landlord, as defined by the Act, and this decision and the orders that accompany it name both the owners of the property and the realty company as landlords.

The landlords requested the Landlord's Application be amended to include retention of the security deposit in partial satisfaction of the rent owed to the landlords. As this

request reduces any Monetary Order the landlords may be entitled to receive I found this request non-prejudicial to the tenant and permitted the amendment.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to monetary compensation for unpaid rent and utilities?
3. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The month-to-month tenancy commenced December 15, 2012 and the tenant paid a security deposit of \$500.00. The tenant was required to pay rent of \$1,000.00 on the 1<sup>st</sup> day of every month. The written tenancy agreement provides that rent did not include utilities such as water, electricity or heat. Utility bills were in the name of the owner who would then request payment from the tenant.

On September 15, 2013 the landlord issued a 1 Month Notice to End Tenancy for Cause which the tenant filed to dispute. The tenant withheld rent that was due on October 1, 2013 and on October 2, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the door of the rental unit. The 10 Day Notice indicates rent of \$1,000.00 was outstanding as of October 1, 2013 and has a stated effective date of October 15, 2013. The tenant did not pay the outstanding rent and did not file or amend her Application to dispute the 10 Day Notice.

The landlords suspects the tenant may have moved out of the rental unit two days ago but have not yet confirmed this information and requested an Order of Possession in case the tenant is still occupying the rental unit.

The landlords requested recovery of the following amounts from the tenant:

Unpaid rent: October 2013	\$ 1,000.00
Hydro bill for June 21 – August 21, 2013	88.19
Water bill for July and August 2013	182.06
Gas bills up to September 19, 2013	<u>99.39</u>
Monetary claim	\$ 1,369.64

The landlord acknowledged that there had been a tenancy in effect for the lower level of the house up until August 2013 and that, ordinarily, the subject tenant was required to pay 2/3 of the utility bills; however, the lower tenants had been out of town for the

summer months and the tenant had agreed to pay 100% of the utility bills during that time as she was the only tenant consuming utilities. The landlord also submitted that the water bill was extraordinarily high because the tenant had filled a swimming pool and had done some power-washing at the property.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; utilities bills; the 10 Day Notice and 1 Month Notice; Monetary Order worksheet; and, registered mail receipt.

### Analysis

Under the Act a tenant is required to pay rent when due in accordance with 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 rent. I was not provided any evidence to suggest the tenant had a legal right to withhold rent for October 2013.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent 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 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 10 Day Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on October 2, 2013. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on the stated effective date of October 15, 2013. Therefore, I find the tenancy has ended 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 evidence before me, I find the landlords entitled to recover unpaid rent for October 2013 in the amount of \$1,000.00.

Upon review of the tenancy agreement and the landlord's undisputed submissions, I accept that the tenant was responsible for paying for utilities she consumed at the property in addition to rent. I find the landlords have largely substantiated the amounts claimed against the tenant for utilities and I award the amounts requested.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlords the filing fee paid for their Application.

In light of the above, I grant the landlords' claim in its entirety and provide the landlords with a Monetary Order calculated as follows:

Unpaid rent and utilities, as claimed	\$ 1,369.64
Plus: filing fee	50.00
Less: security deposit	<u>(500.00)</u>
Monetary Order	\$ 919.64

To enforce the Monetary Order the landlords must serve it upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

#### Conclusion

The tenant's Application has been dismissed. The landlords have been provided an Order of Possession effective two (2) days after service. The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$919.64 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: October 30, 2013

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Residential Tenancy Branch

