



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The landlord was given the opportunity to provide evidence to the Residential Tenancy Branch and to the tenants via facsimile after the hearing had concluded. The parties were given the opportunity to cross examine each other on the testimony given, and all evidence and testimony provided has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of other documents or evidence were raised, and the tenants did not oppose the late delivery of evidence.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2013 and the tenants still reside in the rental unit. Rent in the amount of \$1,800.00 per month is payable in advance on the 1<sup>st</sup> day of each month. Sometime in September, 2013 the landlord collected a security deposit from the tenants in the amount of \$900.00 which is still held in trust by the landlord. A tenancy agreement was prepared, but neither tenant signed it. The landlord signed it and placed a copy in the tenant's mailbox sometime during the month of October, 2013. A copy has also been provided as evidence.

The landlord has collected rent in the form of cash for the months of October and November, 2013 but did not issue any receipts to the tenants. The tenants failed to pay rent when it was due for the month of December, 2013. On December 19, 2013 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by placing it in the tenants' mailbox. A copy has been provided as evidence, and it is dated December 19, 2013 with an expected date of vacancy of December 29, 2013. The notice states that the tenants failed to pay rent in the amount of \$1,800.00 that was due on December 1, 2013.

The tenants further failed to pay any rent for the months of January and February, 2014, and the landlord has not collected any rent since the notice to end tenancy was issued.

The landlord also claims utilities in accordance with the unsigned tenancy agreement, and has also provided a copy of a water/sewer bill in the amount of \$104.72, however the tenancy agreement states that water is the responsibility of the landlord, and the tenants are responsible for heat and electricity. No bills have been provided for heat or electricity. The landlord seeks an order for the tenants to pay those bills when they are received.

The tenant testified that the tenants' baby was severely ill and hospitalized, and the tenants spent a lot of time at the hospital. They had to find a place to live in a hurry for their teen-aged child and for their belongings which were in storage.

The tenant further testified that the tenants were to take possession of the rental unit on October 12, 2013 but the previous tenants were still there. As a result, the tenants were not able to move in until about a week later.

The tenant disagrees that the landlord provided a copy of a tenancy agreement in the tenants' mailbox; one was never found.

The tenant further testified that on October 9, 2013 they paid the landlord \$2,700.00 in cash but did not get a receipt. The amount was to cover the first month's rent and the security deposit. They also paid \$1,800.00 on November 1, 2013. When asked how much the tenants are in arrears, the tenant replied that he didn't know.

With respect to service of the notice to end tenancy, the tenant testified that his teen-aged child gave it to him, but the tenant did not dispute it.

### Analysis

Firstly, with respect to the landlord's application for an Order of Possession, the *Residential Tenancy Act* states that a tenant has 5 days to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities or must pay the rent in full within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after service on the tenant.

In this case, the landlord testified that the notice to end tenancy was placed in the tenants' mailbox on December 19, 2013 and the tenant does not dispute receiving it. The tenant has also stated that the notice was not disputed, and therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession. The *Act* further requires a landlord to serve the notice by a number of different methods, and attaching it to the door of the rental unit or another conspicuous place is acceptable, and I find that placing it in the mailbox is sufficient service. However, the *Act* states that documents served in that manner are deemed to have been served 3 days later. Therefore, I find that the effective date of vacancy should be 3 days later, or January 1, 2014. Since that date has already passed, I find that the landlord is entitled to an **Order of Possession effective on 2 days notice to the tenants.**

The tenants have not moved out in accordance with the notice to end tenancy, and I find have also failed to pay any rent since. Therefore, I find that the landlord has established a monetary claim for unpaid rent in the amount of \$5,400.00. However, the *Act* states that a monetary claim made against more than one party must be served individually to both or all parties. The landlord has only served one of the parties, and I grant the monetary order against that party only. **The application for a monetary order as against the other party is hereby dismissed.**

With respect to utilities, I find it premature for the landlord to make such an application without knowing the amounts, and the bills have not yet been received. **I dismiss that portion of the claim with leave to reapply.**

Since the landlord has been successful with the claim, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlord in the amount of \$5,500.00.

These orders are final and binding on the parties and may be enforced.

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: February 20, 2014

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Residential Tenancy Branch

