



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, RR, FF, OPR, MNR, MNSD, MNDC

### Introduction

This hearing dealt with applications by both the tenants and the landlords. The tenants applied for an order that the landlord make repairs to the unit, site, or property; for an order to allow the tenants to reduce rent for repairs, services, or facilities agreed upon but not provided; and to recover their RTB filing fee. The landlords applied for an order of possession and a monetary order for unpaid rent and utilities and to recover their RTB filing fee.

Both the landlords and tenants attended the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent and utilities?

Are the tenants entitled to an order that the landlord make repairs to the unit, site, or property?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services, or facilities agreed upon but not provided?

### Background and Evidence

The parties agree the tenancy started November 1, 2013 and is a fixed term until November 1, 2014. The tenants are obligated to pay \$1,300.00 rent monthly in advance on the first day of the month, plus one-third of the utilities. The tenants also paid a security deposit of \$675.00.

The landlord gave evidence that he served the tenants with a Notice to End Tenancy for Unpaid Rent and Utilities (the "Notice") by personal service on February 28, 2014. The

Notice states the tenants failed to pay \$1,300.00 in rent that was due February 1, 2014 and \$277.88 in Utilities following a written demand on February 1, 2014. The Notice specifies a move-out date of March 31, 2014.

The landlord gave evidence that the tenants are responsible for paying one-third of both the electricity and gas bills. His evidence is that the bills go to the rental property address, and the landlord then picks them up. His evidence is that he did not have all the relevant bills at the time he filled out the Notice, and the \$277.88 represents an estimate of the utilities owing based on previous bills. The landlord's evidence is that the correct amount of utilities owing at February 28, 2014 is \$319.95.

The landlord gave evidence that the tenants have not made any payments since the Notice was served and did not pay any rent for March 2014. The landlord seeks a monetary order and does not wish to apply the security deposit to unpaid rent or utilities in case he needs to make an application to retain some or all of the security deposit.

The tenants agree that they have not made any payments for rent or utilities since the Notice was served. The tenants' evidence is that they cannot afford to pay rent because damage to the rental unit has rendered it unusable and they have been forced to spend money using daycare and eating out.

The tenants seek an order that the landlord make repairs to the unit, site, or property. The tenants also seek an order to allow them to reduce rent for repairs, services, or facilities agreed upon but not provided. The tenants' evidence is that a pipe leaked in the ceiling of the laundry room on January 25, 2014 and the resulting water has made it impossible for them to use the rental unit normally since that date.

The tenants seek a monetary order for \$9,760.00, comprised of \$7,350.00 for a lost contract of the male tenant and \$2,410.00 for babysitting fees. Regarding the lost contract, the tenants assert that the male tenant had to give up a job doing tiling work because he needed to stay home and assist the female tenant with their children, ages 4 and 9. The tenants' evidence is that, as a result of the water damage, the rental unit was rendered unsafe for the children and the children had to be more closely monitored. The tenants assert that the drywall was removed in some areas, leaving electrical wiring exposed, and they were concerned about their children's exposure to the electrical wiring.

The landlord states that the water leak only affected the laundry room and one closet in the rental unit. The landlord's evidence is that the problem did not impact the heating system, bathroom, or kitchen. His evidence is that on February 5, 2014 he told the

tenants they could pay only 70% of the normal rent for their inconvenience. However, the landlord says the tenants instead paid no rent. His evidence is that the tenants have delayed the repairs by not being present to allow repair workers into the rental unit or by cancelling their availability at the last minute.

The tenants provided photos of the unit. The photos indicate sections of drywall have been cut out of walls, one room (identified as the laundry room by the landlord) has had the flooring removed leaving a concrete floor, and some carpeting in another room (apparently a bedroom) is saturated.

### Analysis

I find the tenant received the Notice on February 28, 2014. I find the amount of unpaid rent specified on the Notice was the correct amount at that date although the amount of unpaid utilities was only an estimate.

I accept the evidence of the landlord that the tenants did not pay the unpaid rent or utilities following the Notice. Pursuant to Section 46 of the Act, since the tenants did not pay the unpaid rent and utilities or apply to dispute the Notice within five days, they are conclusively presumed to accept that the tenancy ends on the effective date of the Notice March 31, 2014. The landlord is therefore entitled to an order of possession.

I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the evidence of the parties that the tenants did not pay rent for February or March 2014. The landlord is therefore entitled to \$2,600.00 in unpaid rent. I accept the evidence of the landlord that the correct total amount of utilities owing at the date of the Notice is \$319.95 and the landlord is entitled to that amount. The total amount due the landlord is therefore \$2,919.95.

Since the tenancy is at an end, it is not necessary that I deal with the tenants' application for an order that the landlords make repairs. Accordingly, the tenants' application for an order that the landlord make repairs to the unit, site, or property is dismissed.

I find that the tenants have not proven, on a balance of probabilities, that the male tenant was forced to give up a contract for work worth \$7,350.00 because of the water damage to the rental unit. The tenants did not provide any evidence that the contract

was not undertaken or that it was not undertaken because the male tenant withdrew. Further, I find the tenants did not provide sufficient proof that the rental unit was unsafe for their children, or that the presence of the male tenant was the most economical method of providing increased supervision of the children.

Similarly, I find the tenants have not proven that they had increased babysitting costs as a result of the water damage to the rental unit. Again, I find the tenants have not proven that the rental unit was rendered unsafe for their children as a result of the water damage. Also, I find the tenants have not proven that the kitchen or sleeping areas of the rental unit were rendered unusable by the water damage.

I find that the tenants did experience some inconvenience as a result of the water leak. The photos indicate that drywall was cut, and the drywall cuts would have resulted in dust in those areas. Also, the room containing the saturated carpet and unusable closet appears to be a bedroom and this would have also caused inconvenience. I find the landlord's offer that the tenants reduce their rent by 30% was reasonable. I accept the landlord's evidence that the tenants themselves delayed the completion of repairs. For that reason, I find that a one month 30% reduction in rent is appropriate. I set the amount of the rent reduction at \$390.00 for the month of February 2014.

The \$390.00 due to the tenants may be set off against the \$2,919.95 due to the landlords. Accordingly, I grant the landlords a monetary order for \$2,529.95. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I order that the landlords follow the process set out in Section 38 for dealing with the tenants' security deposit of \$675.00. Since each party has had some success with their application, I order that each party is responsible for their own RTB filing fee.

### Conclusion

I grant the landlord an order of possession and a monetary order of \$2,529.95. The tenants' application for an order for repairs is dismissed.

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: April 07, 2014

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Residential Tenancy Branch

