



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR, MNR, MNDC, OLC, ERP, RP, RR, FF

For the landlord – OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlords to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied to cancel the Notice to End Tenancy for unpaid rent; for a Monetary Order for the cost of emergency repairs; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; for an Order for the landlords to comply with the *Act*, regulations or tenancy agreement; for an Order for emergency repairs; for an Order for repairs, for an Order to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing and gave sworn testimony. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing although both parties provided this evidence late. The tenant was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application to cancel the 10 Day Notice to End Tenancy for unpaid rent and the tenants claim for a Monetary Order for the cost of emergency repairs and I will not deal with the remaining sections of the tenants claim at this hearing.

### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order to recover unpaid rent or utilities?
- Are the landlords permitted to keep the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant permitted to have the Notice to End Tenancy cancelled?
- Is the tenant entitled to a Monetary Order for the cost of emergency repairs?

### Background and Evidence

The parties agree that this fixed term tenancy started on July 01, 2013 for a year. Rent for this unit is \$1,175.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$590.00 at the start of the tenancy.

The landlord testifies that the tenant failed to pay rent for September, 2013 and March and April, 2014. The tenant also failed to pay utilities of \$1,010.79. The landlords issued a 10 Day Notice to End Tenancy on April 03, 2014. This Notice was served upon the

tenant on that date in person and the landlords have provided a proof of service document signed by the tenant and a witness. The Notice informs the tenant that there is outstanding rent of \$3,525.00 which was due on April 01, 2014 plus unpaid utilities of \$875.00 also due on April 01, 2014. The landlord testifies that since this Notice was served another utility bill has been received making the total amount now owed up to April 07, 2014 of \$1,010.79. The Notice informs the tenant that the tenant has five days to either pay the rent, or dispute the Notice or the tenancy will end on April 13, 2014.

The landlord testifies that no rent has been received from the tenant and the landlord seeks a Monetary Order to recover the unpaid rent and utilities plus the filing fee of \$50.00. The landlords request an Order to keep the security deposit to offset against the unpaid rent. The landlords also request an Order of Possession effective as soon as possible.

The landlord ET testifies that utilities are not included in the rent. At the start of the tenancy the tenant asked the landlords if they could keep the utilities in their name as the tenant was experiencing some financial difficulties. The landlords agreed to do this for a couple of months but reminded the tenant in writing that the utilities must be put in her name or they may be disconnected. The tenant kept promising the landlord that she would put the utilities in her name but failed to do so. The landlords received a call from the utility company asking the landlords to pay the utilities as they were still in the landlords' name. The landlords had to do this in order to keep a good credit rating. The landlord testifies that they could not afford to keep paying for the tenants Hydro and so the Hydro was eventually disconnected in April after the landlords notified the tenant in writing to put the Hydro in her name or risk it being disconnected.

The landlord testifies that the tenant has been sent copies of the utilities and a written demand for payment. The landlords have provided copies of the utility bills in evidence along with a copy of the letters sent to the tenant. The landlord understands that the hydro has not been restored to the tenant's unit as the tenant has not yet put the Hydro in her name in accordance with the tenancy agreement.

The landlords submit that the unit required painting at the start of the tenancy. The tenant submitted a proposal that she would paint the unit if the landlord provided the paint and would replace some flooring with laminate floor in exchange for September's rent. The landlords submit that the tenant's first proposal was rejected as it did not outline the flooring that was agreed on September 01, 2013. The tenant submitted a second proposal that gave a description of the painting and stated that the flooring will be laid when it becomes available in March, 2014. On November 15, 2013 the tenant was notified in writing that the landlord will discuss the painting and flooring proposal once the landlords are satisfied with the flooring material in March, 2014. Until then the exchange of rent for painting and flooring remains in limbo and September's rent must be paid. This letter also informs the tenant that she has not paid a pet damage deposit and informs the tenant about her responsibility to put the Hydro in the tenant's name and the consequence that her power may be disconnected if she does not do so. The landlords have provided a copy of this letter in evidence. The tenant has signed to acknowledge receipt of this letter.

The landlord testifies that the tenant had a pet and did not pay the pet deposit as requested in the letter dated November 15, 2013. The landlords have applied to recover the pet deposit from the tenant.

The tenant disputes the landlords' claims. The tenant testifies that the move-in condition inspection report indicates that the unit will be painted at the start of the tenancy. The tenant testifies that the landlords told the tenant that they could not afford to do this and so the tenant suggested that if the landlords bought the paint the tenant would paint the interior of the unit in exchange for September's rent. The tenant testifies that the landlord thought that the labour was not sufficient to cover the rent so the tenant proposed to also provide and fit laminate flooring. In October, 2013 the tenant asked the landlords for the paint as the tenant wanted to paint the unit before Christmas. The landlords refused as they stated they wanted the flooring down first. The tenant went to look at the flooring that was stored at her father's home and found it was suffering from water damage so could not be used. The tenant testifies that she intended to still do the

flooring and painting and so did not withhold Septembers rent as it was to be used in exchange for this work.

The tenant testifies that she paid rent for September and has provided a rent receipt showing that \$507.70 was paid on September 22, 2013 and the balance of \$667.30 was paid later and the receipt states 'all paid'. The tenant testifies that February's rent was paid plus an extra amount of \$55.00. The receipt shows that the \$55.00 went towards March rent and a further amount of \$1,120.00 was also paid for March, 2014. The tenant has provided copies of both of these receipts, which appear to be signed by the landlord, in evidence.

The tenant agrees that the utilities have not been paid.

The tenant agrees that rent for April has not been paid as the tenant was waiting for a tax rebate. The tenant testifies that she told the landlord that she did have the rent for April 10 days after being served the Notice to End Tenancy. The tenant testifies that as the power has been cut off in the unit the tenant had to use the money for hotels, food and cab fares. The tenant testifies that the landlord told the Hydro Company that he was no longer living at the address of the rental unit and they can disconnect the power. The tenant testifies that she tried to work things out with the landlords but they would not discuss any of this with the tenant. The tenant seeks to have the 10 Day Notice to End Tenancy cancelled.

The tenant testifies that she has not paid to have any emergency repairs done in the rental unit and therefore there is no amount of money owed to the tenant for emergency repairs.

### Analysis

I refer the parties to s. 26 of the *Act* which states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the*

*regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Upon consideration of the documentary evidence before me I find the tenant was notified in writing to put the utilities into her own name. The tenancy agreement does stipulate that utilities are not included in the rent and therefore this is the tenant's responsibility to ensure they are put into her own name as quickly as possible. The tenant has not disputed that utilities are owed and therefore I find in favour of the landlords claim for a monetary award to recover unpaid utilities of **\$1,010.79** pursuant to s. 67 of the *Act*.

The tenant testified that rent for September, 2013 and March, 2014 had been paid in cash and that she had receipts signed by the landlord. The tenant was instructed to provide a copy of these receipts after the hearing had ended. The tenant provided a copy of the receipts as instructed. Upon consideration of the documentary evidence before me I find the tenant has paid rent for September and March and the signed receipts show that rent was paid for these months. However the tenant agrees that rent for April has not been paid and therefore I must limit the landlords claim for a Monetary Order for April of **\$1,175.00** pursuant to s. 67 of the *Act*

I Order the landlords to keep the security deposit of **\$590.00** pursuant to s. 38(4)(b) of the *Act* in partial satisfaction of the landlords claim.

The landlords have applied for a Monetary Order for the pet deposit which was unpaid by the tenant. Any security or pet deposits that remain unpaid at the end of a tenancy cannot be awarded to a landlord as they are an amount that are paid and held in trust until the end of the tenancy. As this tenancy is ending then the landlords would not be entitled to recover any unpaid amount at this time. If a pet deposit is not paid by a tenant within 30 days of getting a pet then the landlords' recourse should have been to issue the tenant with a One Month Notice to End Tenancy for cause and citing that

reason on the Notice. This section of the landlords claim is therefore dismissed without leave to reapply.

As the landlords have been partially successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent for April	\$1,175.00
Unpaid utilities	\$1,010.79
Filing fee	\$50.00
Less security deposit	(-\$590.00)
Total amount due to the landlords	\$1,645.79

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notices state that the tenant had five days to pay all the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been received by the tenant on April 03, 2014, 2013 and therefore the effective date of the Notice should have been April 13, 2014. I accept the evidence before me that the tenant has failed to pay the rent owed for April within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlords an order of possession pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,645.79**. The Order must be served on the tenant, if the tenant does not comply with the Order; the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with the Order the Order and may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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 28, 2014

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Residential Tenancy Branch



