



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPC, MNR, MNSD, MNDC, FF  
Tenant: MNDC, O, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only. The phone lines remained open for 12 minutes but the landlord did not attend.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 19, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5<sup>th</sup> day after it was mailed.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

In addition, as this hearing was a cross Application based on the tenant's Application and the landlord's Application I find the landlord would have been sufficiently aware of the hearing; the date of the hearing and the call in procedures.

At the outset of the hearing, the tenant testified that he has vacated the rental unit.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for unpaid utilities; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for overpaid utilities; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

## Background and Evidence

The tenant provided into evidence the following documents:

- A copy of a tenancy agreement signed by the landlord on March 25, 2013 for a 1 year fixed term tenancy beginning on April 30, 2013 for a monthly rent of \$1,400.00 due on the 1<sup>st</sup> of each month with a security deposit of \$700.00 paid. The agreement does not include utilities;
- A copy of a 1 Month Notice to End Tenancy for Cause dated February 28, 2014 with an effective vacancy date of March 31, 2014 citing the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property; adversely affect the quiet enjoyment, security, safety, and physical well-being of another occupant or the landlord; and a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant submits that the residential property had two rental units; the one he was in and one in the basement that had the landlord's father living in it until September 2013 and a different tenant beginning in October 2013.

The tenant submits that he had to pay utilities for the full property. The tenant submitted a copy of a tenancy agreement and numerous emails between him and the landlord trying to clarify responsibility for utilities. From these emails, the landlord asserted that it was this tenant's responsibility to pay for utilities for the full house.

The tenant has submitted copies of hydro bills for the duration of the tenancy showing the amount of hydro the tenant was responsible for. The tenant seeks compensation in the amount of 30% of the total of these bills or \$726.00.

## Analysis

In the absence of the landlord I dismiss the landlord's Application for Dispute Resolution in its entirety without leave to reapply.

Section 6 of the *Act* states that a term in a tenancy agreement is not enforceable if:

- a) The term is inconsistent with the *Act* or regulations;
- b) The term is unconscionable, or
- c) The term is not expressed in a manner that clearly communicates the rights and obligations under it.

Black's Law Dictionary, 7<sup>th</sup> Edition defines an unconscionable agreement as one that no promisor with any sense, and not under a delusion, would make, and that no honest and fair promise would accept.

Based on the tenant's undisputed evidence and testimony, I find that expecting a tenant to pay the full utilities for a rental property that has other occupants using the same utilities is an unconscionable agreement and is therefore not enforceable.

I accept that as result of this unconscionable term the tenant suffered a loss. I find the 30% of the total hydro usage to be reasonable to attribute to a basement occupant. Based on the tenant's evidence and submissions I find the amount of \$726.00 represents this amount.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$776.00** comprised of \$726.00 hydro over payment and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 08, 2014

---

Residential Tenancy Branch

