



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF, O  
MT, CNR, AS

### Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by one of the named tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent and utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenant has applied for more time to make an application to cancel a notice to end tenancy, for an order cancelling a notice to end tenancy for unpaid rent or utilities, and for an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing, however neither tenant attended. The line remained open while the phone system was monitored for 10 minutes and the only participant who joined the call was the landlord. The landlord testified that each of the named tenants were individually served with the Landlord's Application for Dispute Resolution and notice of hearing documents personally on March 26, 2014, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

The landlord testified that the tenant has not served the landlord with the Tenant's Application for Dispute Resolution. The tenant has not attended the hearing, and I am satisfied that the tenant has failed to serve the Tenant's Application for Dispute Resolution within 3 days as required by the *Act*, and I hereby dismiss the tenant's application in its entirety without leave to reapply.

All evidence and testimony has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* 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?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began in May, 2009 and the tenant still resides in the rental unit. Rent in the amount of \$950.00 per month is currently payable in advance on the 1<sup>st</sup> day of each month, having been reduced by the landlord about 3 years ago from \$1,050.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of a tenancy agreement has also been provided between the landlord and the first named tenant, but it is not dated.

The landlord further testified that the tenant has had a habit of not paying rent when it is due. The landlord has provided a tenant ledger showing that as of February 7, 2013, the tenant was in arrears of rent the sum of \$1,999.01. The tenant made a partial payment of \$500.00 on the 8<sup>th</sup> of February and another \$500.00 on the 24<sup>th</sup> of February, leaving a balance of \$999.01. Arrears have accumulated and partial payments have been made, and as at May 1, 2014 the tenant owes \$7,449.01.

The landlord further testified that utilities are in the landlord's name and the tenant is obligated to pay for gas, electricity and the City Utility bill and has fallen into arrears. The tenant ledger combines rent and utilities, and the landlord testified that the total amount of utilities owed to date is \$2,428.10.

The landlord also testified that the tenant has allowed another occupant into the rental unit who also claims to be a tenant, but the landlord did not enter into a tenancy agreement with that person and the tenancy agreement states that: "The premises are exclusively rented with no subletting permitted." Further, the other occupant is currently incarcerated.

The landlord caused the tenants to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and both pages of the 2-page form have been provided. The notice is issued to the first named tenant who signed the tenancy agreement, and is dated March 3, 2014. The notice contains an expected date of vacancy of March 13, 2014 and the landlord testified that the notice was served on March 3, 2014 by 2 agents of the landlord who placed the notice in the mailbox of the rental unit on that date.

The landlord has not been served with an Application for Dispute Resolution disputing the notice to end tenancy.

The landlord asks for an Order of Possession and a monetary order for the unpaid rent and utilities. The landlord also asks to keep the security deposit of \$525.00 in partial satisfaction of the claim, and recovery of the \$100.00 filing fee for the cost of the application.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement. In this case, I have reviewed the tenancy agreement and find that rent is payable on or before the 1<sup>st</sup> day of each month.

The *Act* further states that if a tenant fails to pay rent when it is due under the tenancy agreement, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant has 5 days to pay the rent in full or dispute the notice. 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. The *Act* also provides that documents served by posting them to the door, placing them in a mailbox or other conspicuous place are deemed to be served 3 days later. I am satisfied that the notice was left in the mailbox of the rental unit on March 3, 2014 and is therefore deemed to have been served on March 6, 2014. The *Act* states that incorrect effective dates contained in a notice to end tenancy are changed to the nearest date that complies with the *Act*, which I find is March 16, 2014. The tenant has not moved out of the rental unit and has not paid the rent in full, and I find that in the absence of the tenant at this hearing, and in the absence of any evidence to the contrary, the tenant has not served the landlord with the Tenant's Application for Dispute Resolution. Therefore, I find that the landlord is entitled to an Order of Possession.

I further find that the other named tenant is an occupant and not a tenant. The tenancy agreement is clear with respect to who the tenant is exclusively, and that no subletting is permitted.

With respect to the landlord's application for a monetary order, I have reviewed the tenant ledger and find as follows:

DATE	RENT DUE	UTILITIES DUE	AMOUNT PAID	BALANCE DUE
Jan 31/13	B/F			\$1,049.01
Feb 1/13	\$950.00			1,999.01
Feb 8/13			\$500.00	1,499.01
Feb 24/13			500.00	999.01
Feb 28/13 Gas		\$111.75		1,110.76
Mar 1/13	950.00			2,060.76
Mar 8/13			500.00	1,560.76
Mar 31/13 Gas		83.21		1,643.97
Mar 31/13 Elec		85.77		1,729.74
Mar 31/13 City Util		35.21		1,764.95
Apr 1/13	950.00			2,714.95
Apr 4/13			600.00	2,114.95
Apr 30/13 Gas		66.10		2,181.05
Apr 30/13 Elec		60.60		2,241.65
Apr 30/13 City Util		35.85		2,277.50
May 1/13	950.00			3,227.50
May 7/13			500.00	2,727.50
May 31/13 Gas		50.20		2,777.70
May 31/13 City Util		39.83		2,817.53
Jun 1/13	950.00			3,767.53
Jun 12/13			500.00	3,267.53

June 30/13			500.00	2,767.53
June 30/13 Gas		30.81		2,798.34
June 30/13 City Util		44.16		2,842.50
July 1/13	950.00			3,792.50
July 1/13			100.00	3,692.50
July 31/13 Gas		29.12		3,721.62
July 31/13 Elec.		52.00		3,773.62
July 31/13 City Util		39.83		3,813.45
Aug 1/13	950.00			4,763.45
Aug 31/13 Gas		25.19		4,788.64
Aug 31/13 Elec		51.72		4,840.36
Aug 31/13 City Util		42.02		4,882.38
Sep 1/13	950.00		1,500.00	4,332.38
Sep 30/13 Gas		25.61		4,357.99
Sep 30/13 City Util		58.46		4,416.45
Oct 1/13	950.00			5,366.45
Oct 31/13 Gas		38.15		5,404.60
Oct 31/13 Elect.		49.69		5,454.29
Oct 31/13 City Util		49.24		5,503.53
Nov 1/13	950.00		850.00	5,603.53
Nov 30/13 Gas		54.55		5,658.08
Nov 30/13 City Util		45.97		5,704.05
Dec 1/13	950.00		700.00	5,954.05
Dec 31/13 Gas		94.25		6,048.30

Dec 31/13 Elect		88.79		6,137.09
Dec 31/13 City Util		46.82		6,183.91
Jan 1/14	950.00		1,100.00	6,033.91
Jan 31/14 Gas		124.32		6,158.23
Jan 31/14 City Util		45.97		6,204.20
Feb 1/14	950.00		950.00	6,204.20
Feb 28/14 Gas		101.08		6,305.28
Feb 28/14 City Util		54.58		6,359.86
Mar 1/14	950.00			7,309.86
Mar 31/14 Gas		135.76		7,445.62
Mar 31/14 Elec		48.38		7,494.00
Apr 1/14	950.00			8,444.00
May 1/14	950.00			9,394.00

The landlord's ledger also contains an entry for a prescription in the amount of \$20.00, and I decline to consider that as an amount due under the tenancy.

I have also reviewed the notice to end tenancy which shows that as at March 3, 2014 the tenant owed \$4,599.01 + \$950.00 which the landlord testified is for March rent.

I find that the landlord has established a claim as against the tenant for unpaid rent and utilities in the amount of \$9,394.00. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of filing. I order the landlord to keep the \$525.00 security deposit in partial satisfaction, and I grant the landlord a monetary order for the difference in the amount of \$8,969.00 as against the first named tenant only. The landlord's application as against the other named tenant is hereby dismissed.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$525.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order as against the first named tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$8,969.00.

The landlord's application for a monetary order as against the second named tenant is hereby dismissed.

These orders are final and binding 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: May 14, 2014

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Residential Tenancy Branch

