



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Codes: CNR, MNR, OPR, MNSD, ERP, FF

### Introduction:

This was an application by the tenants for an Order to cancel a 10 day Notice to End the Tenancy dated April 2, 2014, and a monetary Order for overpaid water utilities. This was also a cross application by the landlords for an Order for Possession, a Monetary Order and an Order to retain the security deposit in partial satisfaction of the monetary claim. The landlords and tenants were represented on the application.

### Issues:

Are the landlords entitled to an Order for Possession and Monetary Order?  
Are the tenants entitled to any relief?

### Background and Evidence:

The parties admitted service of their applications. Based on the testimony of the landlord I find that the tenants were served with the Notice to End the Tenancy on April 5<sup>th</sup> by putting it in their letter box on April 2, 2014. The landlord CM testified that tenancy began on November 6, 2011 for a fixed one year term, with rent in the amount of \$ 1,700.00 due in advance on the first day of each month. The tenants paid a security deposit of \$ 850.00 on November 6, 2011.

The landlord relied upon a written tenancy agreement which stated that it was for one year and continued on a month to month basis thereafter. The landlord also relied upon a clause in the aforesaid tenancy agreement purporting to deal with water utilities which stated as follows:

“Water Bill would be reimbursed from tenant quarterly once landlord received the bill from city government”

The landlord testified that the tenants had not paid the rent in full or on time since at least January 2014. He testified that when they paid he applied the payment first to the

water bill and then to rent. He testified that he had always presented the water bills to the tenants before applying their payments. The landlord testified that as a result the total outstanding amount of rental arrears to date is \$ 7,057.17.

The tenant KA testified that the landlord promised them the water utilities would never exceed \$ 30.00 per month. He further testified that this one year tenancy agreement ended on October 31, 2012 and thereafter was governed by the "RTB Act and rules of the RTB." He argued strenuously that neither the Act or rules dealt with utilities and therefore the tenants were either not responsible for any of the landlords' utilities or that the landlords must renegotiate for their payment on a more reasonable amount closer to what was promised originally. The tenant submitted that by his calculation the water utilities ought to be reduced to \$ 30.00 per month and therefore the landlords ought to credit the tenants with the sum of \$ 2,550.00. The tenant admitted the arrears of rent but asked that they be reduced by this amount. The tenants abandoned any claim for reimbursement for emergency repairs.

The landlord replied that he had advised the tenants at the outset that the previous tenants consumed about \$ 30.00 in water utilities per month. He denied promising them that that amount would be their actual consumption.

#### Analysis:

I find that the parties entered into a one year fixed term tenancy commencing on November 6, 2011 ending on October 31, 2012 as evidenced by a written agreement signed by all parties. I further find that the clause dealing with water utilities is a valid clause which the tenants were bound by notwithstanding that the tenants believed that the water utilities would not exceed \$ 30.00 per month. If that were part of the agreement, then it ought to have been included in the written tenancy agreement. It is a well known principle of law that written contracts embody the complete agreement of the parties. I therefore reject the tenants' argument that the landlord agreed water utilities would not exceed \$ 30.00 per month.

#### How a tenancy ends

- 44 (3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.** (my emphasis added)

Pursuant to section 44(3) of the Act a month to month tenancy agreement is deemed to be renewed on the same terms as the original written one. In this case the tenancy renewed and continued on a month to month basis after October 31, 2012 with exactly the same terms contained in the original written agreement signed by the parties. I

therefore reject the tenants' submission that the utilities term ends after the expiration of one year, but rather that term is deemed to be included in the following month to month agreement which persists to date. Accordingly I have dismissed all of the tenants' applications.

I find the Notice to End the Tenancy valid. Furthermore, the tenants admit not paying all the outstanding rent and not paying any rent for June 2014. Pursuant to section 55 of the Act I find that the landlords are entitled to an order for possession effective two days after service on the tenants. I find that the landlords have established a claim for unpaid rent totalling \$ 7,057.17 for all outstanding rent up to May 2014. The landlords are entitled to recover the \$ 100.00 filing fee for this application for a total claim of \$ 7,157.17.

Conclusion:

I have dismissed all of the tenants' claims herein. They will not be entitled to recover their filing fee. I have granted the landlords an Order for Possession. This order may be filed in the Supreme Court and enforced as an Order of that Court. I order that the landlords retain the deposit and interest of \$ 850.00 and I grant the landlords an order under section 67 for the balance due of **\$ 6,307.17**. This order may be filed in the Small Claims Court and enforced as an order of that Court. This Decision and all Orders must be served on the tenants as soon as possible. The landlords have leave to reapply for any outstanding loss of rent, or revenue beyond May 2014 as well as any provable unpaid utilities.

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: June 02, 2014

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Residential Tenancy Branch

