



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – DRI, CNR, O

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

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to dispute an additional rent increase, to cancel a Notice to End Tenancy for unpaid rent or utilities; and other issues. The landlords applied for an Order of Possession for unpaid rent or utilities; an Order of Possession for cause; an Order of Possession because the tenant breached an agreement with the landlord; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord 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 and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision. .

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws their applications for an Order of Possession. The landlords also withdraw their application for money owed or

compensation for damage or loss. The tenant withdraws her application to dispute the Notice and to dispute an additional rent increase.

### Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?
- Are the landlords permitted to keep the security deposit?
- What other issues does the tenant have?

### Background and Evidence

The parties agreed that this tenancy started originally on August 01, 2012. A new tenancy agreement was entered into on August 01, 2013 for a fixed term tenancy which must end on July 31, 2014. The tenant vacated the rental unit on that day. Rent for this unit was \$800.00 per month due on the 1<sup>st</sup> day of the month plus 20 percent of utilities. The tenant paid a security deposit of \$387.50 on July 23, 2012. Both parties attended the move in and move out condition inspections of the unit and the tenant provided a forwarding address in writing on July 19, 2014.

The landlord DL testified that the tenant paid \$412.50 in rent for July and withheld an amount of \$387.50 which was equal to the tenant's security deposit. DL testified that they are not able to apply the security deposit to the last month's rent as it is held in trust until the end of the tenancy. Due to this the landlords issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent and utilities on July 02, 2014. This Notice was served to the tenant on that date by posting it to the tenant's door. The Notice informed the tenant that she owed rent of \$387.50 and \$330.00 for utilities. The Notice notified the tenant that the tenant had three days to pay the outstanding rent or utilities or dispute the Notice or the tenancy would end on July 18, 2014.

DL testified that the tenant did not pay the outstanding rent or utilities but did vacate the unit on the last day of the tenancy. The landlords therefore seek to recover unpaid rent of \$387.50. DL testified that when they calculated the amount owed for utilities they had to estimate one bill as it had not yet been received. The landlords have revised the amount owed for utilities and state that there is \$154.75 owed which the tenant has agreed to in her documentary evidence. There is also an amount of \$71.34 owed for the bill from May 14 to July 13, 2014 and an amount of \$18.72 owed which the landlords have had to estimate, based on the previous two months usage, as this bill has not yet been received for the period between July 14 to July 31, 2014.

The landlords seek an Order to keep the security deposit to apply against the unpaid rent and utilities. The landlords also seek to recover the \$50.00 filing fee.

The tenant testified that she did withhold \$387.50 from Julys rent as the security deposit would cover that amount. The tenant disputed the amount owed for utilities and testified that the utilities just kept going up. Originally the utilities were with the city but were then taken over by the utility company. The landlord had told the tenant that the reason the bills were higher was because the City had estimated the bills for the past year and this was not being corrected in higher bills. The tenant testified that there was also issues in the unit with wiring and the hot water tank which could have caused higher bills.

One of the elements in the hot water tank was not working, DL looked at it and said it was ok but the landlord would not pay to have a professional look at this problem. The tenant testified that the landlords also had a space heater running in one small room of the house and bulbs kept blowing in the tenant unit. The tenant agreed that she owed \$157.75 and \$71.34 according to the bills provided to the tenant by the landlords; however, the tenant testified that these should have been lower if the landlord had corrected the issues in the house.

The landlord disputed the tenant's claims. DL testified that the utility room, which the tenant did not have access to, was a small room with no heating and the pipes froze so

a small space heater was put in that room to keep the temperature above freezing. This uses such a small amount of power it could not affect the tenant's utility bills as the tenant claims. DL testified that with regard to the hot water tank; it has two elements but only the top element came on. DL replaced the bottom element but then the top element would not come on. DL testified that he spoke to a plumber and was told that when the tank drains only the element under the water will come on and this is dependent as to how much cold water comes into the tank. The tenant asked for a second opinion and the landlord informed the tenant that she could get a second opinion but the landlord would not pay for it as there was nothing wrong with the tank and the tenant would have to cover that cost.

The tenant testified that in the winter months it got very cold in the unit as there were drafts coming under two doors and the laundry room door. The landlord did fix the two doors but advised the tenant to keep a towel under the laundry room door to prevent drafts.

The tenant testified that she would rather pay the final utility bill after the landlords have provided a copy of the bill to the tenant so the tenant can pay the actual amount owed for her 20 percent share.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' claim for unpaid rent; I refer the parties to Section 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.*

I have no evidence before me to suggest that the tenant has a right under the Act to withhold rent. A tenant may not apply the security deposit to the last month's rent as it is an amount held in trust by the landlords until the end of the tenancy. The landlords are then required to either return the deposit to the tenant or file a claim to keep it within 15 days of either receiving the tenant's forwarding address or the end of the tenancy. Consequently, it is my decision that the landlords are entitled to recover the amount of **\$387.50** from the tenant.

With regard to the landlords' claim for unpaid utilities; I have insufficient evidence to show that the bills were much higher than previous bills taking into account the general increase in utilities and the difference between the Cities one month billing period to the utility companies two month billing period. I find the landlords acted in a timely manner when the tenant reported any problems in the unit which could create a loss of heat or higher utility bills. Consequently, it is my decision that the landlords are entitled to recover unpaid utilities of **\$154.75** and **\$71.34**.

The remainder of the landlords' claim for utilities of \$18.72 will not be awarded at this time as the landlords are required to provide the tenant with a copy of any utility bills with the tenants share clearly documented and a written demand for payment within 30 days. Consequently, this portion of the landlords' claim to recover the amount owed or the final utility bill is dismissed with leave to reapply.

I Order the landlord to keep the security deposit of **\$387.50** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlords' monetary claim. I further find the landlords are entitled to recover the **\$50.0** filing fee from the tenant pursuant to s. 72(1) 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 **\$276.09** pursuant to s.

67 of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The tenant's application is dismissed 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: August 22, 2014

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Residential Tenancy Branch

