



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF  
                              CNR, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Landlord and Tenants. The Tenants applied to cancel a notice to end tenancy for unpaid rent and to recover the filing fee. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenants’ security deposit and to recover the filing fee.

The Landlord appeared for the hearing with an Agent who made submissions on her behalf because the Landlord claimed that she was traumatised by this tenancy; however, the Landlord had to be warned several times during the hearing regarding her interruptions when her agent was making submissions to me.

One of the Tenants referred to as “AK” on the first page of this decision, appeared for the hearing along with an agent who represented the remainder of the two Tenants named on the Tenants’ Application.

### Preliminary Issues

The parties provided conflicting evidence around the receipt of each other’s written evidence for this hearing. As a result, I determined that I would only refer to written evidence that had been submitted to the Residential Tenancy Branch within the time limits set out by the Rules of Procedure.

The parties explained that the Tenants had moved out of the rental suite on August 29, 2014. As a result, I dismissed the Landlord’s Application for an Order of Possession and the Tenants’ Application to cancel the notice to end tenancy as these are now moot issues which do not need to be determined.

However, this left the Landlord's monetary claim for unpaid rent and utilities and the parties' claim to recover their filing fee. The parties were still at dispute about aspects of the Landlord's monetary claim and the Landlord explained that there were damages to the rental unit. However, the Landlord had not made a claim for damages to the rental unit but is at liberty to make a further Application for damages and provide the necessary evidence to support the monetary claim.

The hearing process was explained to the parties and they were asked whether they understood the hearing instructions and if they had any questions; no questions were asked.

### Issues to be Decided

- Is the Landlord entitled to unpaid rent for August, 2014?
- Is the Landlord entitled to keep the Tenants' security deposit?
- Is the Landlord entitled to unpaid utilities?

### Background and Evidence

This tenancy started on May 1, 2014 for a fixed term period that expired on September 1, 2014. The parties completed a written tenancy agreement and rent was payable by the Tenants in the amount of \$1,450.00 on the first day of each month. The Tenants paid the Landlord a full month's rent as a security deposit on April 21, 2014 which the Landlord still retains.

The Landlord explained that the Tenants had not paid rent for August, 2014 and as a result they were issued with a notice to end tenancy for unpaid rent.

AK did not dispute this and explained that they did not pay rent for August, 2014 because the Landlord had a security deposit for a full month's rent and that this was to be applied to August, 2014 rent because the Landlord was in breach of the Act in requesting an excessive amount of the deposit.

The Landlord testified that the Tenants were charged half a month's security deposit and the other half paid by the Tenants related to a furniture deposit as the rental suite was provided as a furnished unit.

In relation to the remainder of the Landlord's monetary claim of \$1,600.00, the Landlord claims unpaid utilities in the amount of \$150.39 on her Monetary Order Worksheet. The

Landlord provided a number of utility bills which related to differing amounts for differing periods of the year, some of which related to periods before this tenancy started. The Landlord was providing conflicting and confusing evidence, which the Agent was unable to present and explain, on what utilities were outstanding and how they related to this monetary claim amount. Furthermore, the Landlord then testified that she had utility bills to show they were unpaid, but these had not been submitted in written evidence prior to the hearing within the time lines set out by the Rules of Procedure.

The Agent for the Tenants submitted that water bills in the city are generally generated in six monthly cycles and therefore the water bill for this tenancy may not still be available to the parties.

### Analysis

Section 19 of the Act explains that a Landlord may only require or accept up to half of the month's rent payable under the tenancy agreement as a security or pet damage deposit. If the Landlord accepts more than this amount, the Tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Section 21 of the Act provides that a Tenant must not apply a security or pet damage deposit as rent unless the Landlord gives written consent.

Based on the above provisions of the Act, I find that both the Tenants and the Landlord breached the Act. The Landlord breached Section 19 of the Act by requesting and accepting a security deposit that was more than half the month's rent payable under the tenancy agreement. Furthermore, the Act does not allow a Landlord to request and accept a 'furniture deposit' irrespective of whether the rental suite is furnished or not.

While the Tenants had authority under the Act to deduct the over payment of their security deposit from rent, this would have only allowed the Tenants to deduct \$725.00. However, the Tenants deducted a whole month's rent by not paying August, 2014 rent at the end of the tenancy in the amount of \$1,450.00 and this was a breach of Section 21 of the Act.

Therefore, it is my finding that the Tenants are liable to pay for August, 2014 rent in the amount of \$1,450.00 as this was not paid. However, as the Landlord already holds this amount in the Tenants' security deposit, which was procured illegally from the Tenants, I give permission for the Landlord to retain this amount in full satisfaction of the unpaid rent for August, 2014.

As both parties breached the Act, I am not prepared to award any of the parties their filing fee for the cost of making their Application.

In relation to the Landlord's monetary claim for utilities, I give leave to the Landlord to re-apply for this portion of her Application as she had written evidence which was not submitted for this hearing and the Tenant's agent submitted that the water bill may not be ready until the end of this month.

### Conclusion

For the reasons set out above, I dismiss the Tenants' Application.

The Landlord's Application for an Order of Possession is dismissed.

The Landlord monetary claim for unpaid rent is awarded and the Landlord is able to keep the Tenants' security deposit in full satisfaction of this amount.

The Landlord's Application for unpaid utilities is dismissed with leave to re-apply.

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: October 16, 2014

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Residential Tenancy Branch

