



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR FF CNR LAT RR

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession pursuant to a section 46 Notice for unpaid rent or a section 47 for cause;
- b) To obtain a monetary order for the rent and utilities outstanding; and
- c) To recover the filing fee for this application.

This hearing also dealt with an application by the tenant to cancel the Notice to End Tenancy for unpaid rent and to order the landlord to obey the Act and not enter without advance notice and permission in accordance with sections 28 and 29 of the Act, to not interrupt facilities, to provide copies of utility bills for payment and to provide receipts.

### **Service:**

The Notice to End Tenancy is dated September 4, 2014 to be effective September 14, 2014 and the tenant confirmed it and the Application for Dispute Resolution were served personally. The landlord confirmed the tenants' Application was also served personally. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 46 or 47 and he is entitled to an Order of Possession or is the tenant entitled to any relief? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that the landlord through act or neglect has interrupted their services and entered their unit contrary to sections 28 and 29 of the Act? Is the tenant entitled to receive original copies of utility bills and receipts?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 1, 2014, rent is \$1850 a month plus 80% of utilities and a security deposit of \$925 was paid in July 2014. The landlord provided evidence that rent was unpaid for September or October and

utilities since July 2014. He provided copies of bills for BC Hydro and Fortis Gas which he had typed in a demand letter, but not copies of the original bills. He included in his monetary claim rent for November and a number of estimated bills for utilities in the amount of \$135 per month.

The tenants did not dispute that they owed \$735 rent for August, \$1850 for September and \$1850 for October. They disputed that the landlord has included November's rent in his request for a monetary order and also the utilities claimed as the landlord refused to provide them with copies of the original bills for the hydro and gas. They said they have no way of verifying that it is the correct cost of the utilities and yet they have to pay 80% of them to the landlord. They noted they had a Police file number for when the landlord entered the tenants' unit without permission. The landlord said he gave an estimated amount to them for utilities and if they had paid them, he would have showed the bills to them. He said he showed one to the male tenant but the tenant denied this.

The tenants also said they got no receipts and the landlord denied this and said he provided receipts and they are in evidence. The tenants also note the landlord shut off their power for about an hour (the landlord said half an hour) and the female tenant was unable to print a ticket and had to buy another one. The landlord said he was repairing a receptacle and he knocked on the door and tried to telephone but the tenants did not answer so he assumed they were not home and turned off the power until he fixed the receptacle. It was a necessary repair.

The tenant complained about hot water being shut off. The landlord acknowledged they were without hot water (himself included) for a few days. He got notification from them on July 4, contacted plumbers and was able to schedule one for July 7, 2014; a text message confirms this.

The tenants live upstairs and the landlord downstairs in the home. The tenants said laundry was included in their lease and it did not say it was to be shared with the landlord. There was dispute about the use of the laundry facilities and the landlord entering to use them as the laundry room is at the back entrance of the tenants' unit; however, there was a locked door between the tenants' unit and the laundry and the landlord maintained it was a shared facility. However, he testified that the tenants removed the locked door and moved the dryer into their kitchen so he withdrew the laundry facility with proper notice according to section 27 of the Act and reduced their rent by \$25 a month commencing in October 2014 for its withdrawal. He said it was the only way in his opinion to end the dispute. The tenant also complained of illegal entry into their unit by the landlord and called the Police on October 8, 2014; the landlord said this was part of the ongoing laundry problem and while the police were there, he was able to gain access to the laundry.

Included with the evidence are statements of the landlord, a Notice of Demand to pay unpaid utilities, Notices to Enter Premises on August 20, 2014 and September 23, 2014 for a monthly inspection, a Notice to provide post dated cheques, other Notices relating to tenants' alleged misuse and damage of the property, a Notice to clean up the shared laundry room dated August

29, 2014, a notice regarding an unpaid pet damage deposit (they had a dog), a Notice Terminating or Restricting a Facility dated September 3, 2014 to deny access to the washer and dryer and reducing rent by \$25 a month, a one month Notice to End Tenancy for cause, a letter from the municipality noting water would be shut off October 1, 2014 to improve the water system (they note there may be problems with hot water units), copies of receipts for rent payments in July and August 2014 noting partial payments and balances remaining, the tenancy agreement which includes free laundry and the 10 day Notice to End Tenancy dated September 4, 2014.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

The onus is on each party to prove their claim on a balance of probabilities. The onus is on the landlord to prove that there is outstanding rent which has not been paid and he is entitled to an Order of Possession and a monetary order for rental arrears and utilities.

I find the landlord has satisfied the onus in the matter of the outstanding rent. I find he is entitled to an Order of Possession effective October 24, 2014 as agreed in the hearing. I find he is entitled also to a monetary order for rent arrears of \$735 for August and \$1850 for September and \$1825 for October (reduced due to withdrawal of laundry) for a total of \$4410 in outstanding rent. I decline to award him rent for November, 2014; he has not incurred this loss and he may re-rent the unit as it is his duty to mitigate his loss. I give him leave to reapply for this amount if rental loss is suffered and he is unable to mitigate the loss by re-renting. I also deny him costs of changing the locks since this has not yet been done and the tenants are still in residence.

I find there is insufficient verifiable information about the utilities owed. The landlord has still not provided in evidence copies of the actual bills of the utility companies. I decline to award a monetary order to reclaim utility costs based mostly on estimates and the landlord's numbers. However, I give him leave to reapply for his utility costs that are itemized and supported by the invoices from the companies involved.

In respect to the tenants' claim, I find their lease included free laundry but did not guarantee them use of it exclusively. I take note that many tenants share laundry which is included in a lease. I find the landlord gave them the proper notice under section 27 of the Act to terminate this service and reduce rent as the situation over the shared laundry room had escalated to the point of calling the police. I dismiss this portion of their claim. I find insufficient evidence that the landlord entered their suite illegally; I find it unlikely that he did so as he had previously served the legal notices to gain entry in August and September. I dismiss this portion of their claim. Although the tenant said she had further evidence to submit yesterday, I find she had from August 18, 2014 to supply her evidence and it would be unfair to the landlord to give her additional time to provide evidence as he is suffering additional loss daily with this tenancy.

Furthermore, the evidence she mentioned (a police report) would be unlikely to affect this outcome.

Regarding the claim for interrupted services, the tenants have the onus of proving on a balance of probabilities that the landlord through act or neglect interrupted their services. I find the landlord has a duty under section 32 of the Act to maintain the unit and the weight of the evidence is that he disrupted the electricity for an hour or less to do a necessary repair. In respect to the hot water shut off, I find it occurred July 4, 2014 and the landlord was able to engage a plumber and have it repaired July 6, 2014. I find no evidence that the water shut off was caused by the landlord's act; I find he acted promptly to effect a repair. Therefore I find the tenants not entitled to compensation for these interruptions.

**Conclusion:**

I find the landlord entitled to an Order of Possession (enclosed) effective October 24, 2014 as requested. I find him entitled to a monetary order as calculated below and to recover the filing fee and retain the security deposit to offset the amount owing.

I give the landlord leave to reapply for outstanding costs of utilities and any further rental loss after October, 2014 and damages that may occur.

I dismiss the application of the tenants in its entirety without leave to reapply.

**Calculation of Monetary Order:**

Rent arrears and loss-Aug to Oct. \$735+1850+1825	4410.00
Filing fee for this application	100.00
Less security deposit	-925.00
Total Monetary Order to Landlord	3585.00

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

