



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPR, OPL, MNR, MNDC, FF

For the tenant – CNR, MNDC

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for unpaid rent or utilities; for an Order of Possession for landlord's use of the property; for a Monetary Order for unpaid rent or utilities; 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 applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement. The landlord's agent withdrew the landlord's application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement at the outset of the hearing.

The tenant and landlord's agent 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 limited 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.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to an Order of Possession for landlord's use of the property?
- Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?
- Is the tenant entitled to a monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on October 01, 2013 although the tenant testified he had moved in earlier as a roommate of the original tenant. This was a verbal agreement between the parties. At first rent for this unit was \$650.00 a month which included utilities. This was reduced to \$500.00 a month in March, 2014 when the tenant put utilities into his own name.

The landlord's agent testified that the tenant failed to pay all the rent for October, 2014. The tenant paid \$250.00 leaving an outstanding balance of \$250.00. The tenant also failed to pay rent for November of \$500.00 and a 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenant on November 07, 2014 in person. The Notice informed the tenant that they had five days to either pay the outstanding rent of \$750.00 or file an application to dispute the Notice. The Notice has an effective date of November 17, 2014. The landlord's agent testified that the tenant failed to pay the outstanding rent and did not file his application to dispute the Notice within the five allowable days. The landlord's agent testified that since the Notice was served the tenant has also failed to pay rent for December, 2014.

The landlord seeks to obtain an Order of Possession effective as soon as possible and a Monetary Order for \$1,250.00 plus the \$50.00 filing fee.

The tenant disputed the landlord's claims. The tenant testified that he only paid \$250.00 for October and no rent for November and December as the landlord owed the tenant money for Hydro Bills and double the rent that as paid for the first two months at the start of the tenancy. The tenant testified that he has also been paying the hydro for the other unit in the building and the hotwater and laundry for the third unit since March, 2014 when the hydro was put in the tenant's name because the landlord did not pay the utility bills for this property.

The tenant testified that in October, 2013 he paid a hydro bill for the landlord of \$504.00 to ensure the hydro would remain on in the unit. The tenant testified that he also paid \$650.00 in rent for October and November and his roommate also paid \$500.00 directly to the landlord through Welfare for the rent for this unit. The tenant has calculated that he has therefore overpaid the rent by \$1,150.00 in 2013 and \$504.00 for utilities. The tenant testified that he therefore deducted these amounts from the rent due for October, November and December, 2014.

The tenant testified that therefore when the Notice was served upon the tenant it was null in void because there was not rent outstanding at that time. The tenant seeks to have the Notice set aside.

The tenant testified that since March, 2014 when hydro was put in the tenant's name; the tenant has calculated that the other tenants or the landlord owe the tenant an amount for hydro. The tenant testified that his monthly bill was \$182.00 for his unit and this is the regular monthly payment. The tenant calculated this by turning off the breaker to determine how much power his unit used and the power the other units used. The tenant testified that when new tenant moved into the other unit the tenant's hydro went up drastically and a new monthly plan as put together for the tenant of \$372.00 at the beginning of November. The tenant testified that the landlord's agent attending this

hearing should be aware that no hydro for that unit is being paid as he is the tenant of that unit.

The tenant seeks to recover \$1,500.00 or have this applied to the outstanding rent.

The landlord's agent disputed that the tenant settled the landlord's hydro bill in 2013 or that the tenant overpaid the rent in October and November, 2013 as both tenants at that time were responsible for their share of the rent.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's application; 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.*

The landlord's agent argued that rent of \$1,250.00 is outstanding; the tenant argued that this was paid at the start of the tenancy with overpayments of rent and the landlord's utility bill paid by the tenant. When one person's testimony contradicts that of the other then the person making the claim in this matter has the burden of proof. The burden of proof falls to the tenant to provide corroborating evidence to show that the tenant has paid \$504 for a hydro bill for the landlord and doubled up on the rent for October and November, 2013. The tenant has insufficient corroborating evidence to meet the burden of proof in this matter. I am therefore satisfied that the tenant owes rent of \$250.00 for October, 2014 and \$1,000.00 for November and December, 2014. Consequently, it is my decision that the landlord is entitled to recover these amounts to a total of **\$1,250.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

I accept that the tenant was served the Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice was deemed to have been served on November 07, 2014 and the tenant had until November 12, 2014 to file an application to dispute the Notice. The tenant filed his application to dispute the Notice on November 13, 2014. The tenant did not pay all the outstanding rent within five days and did not apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service upon the tenant, pursuant to s. 55 of the *Act*.

With regard to the Two Month Notice to End Tenancy, The landlord has not checked any reasons on page two of this Notice and therefore I will not deal with this Notice as without a reason to end the tenancy the Notice is invalid.

With regard to the tenant's application to set aside the 10 Day Notice to End Tenancy. As I have issued an Order of Possession to the landlord I find the tenant's claim to set aside the 10 Day Notice has no merit and is dismissed.

With regard to the tenant's claim to recover an amount over overpaid rent and utilities; the tenant has the burden of proof in this matter to show that utilities and or rent were overpaid. As I have determined that the tenant has insufficient evidence such as no utility bills I must determine that the tenant has insufficient evidence to support his claim for a Monetary Order. This section of the tenant's claim is therefore dismissed.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,300.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service upon the tenant. This Order must be served on the Respondent and may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed in its entirety 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: December 17, 2014

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Residential Tenancy Branch

