



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNDC, FF  
                              CNR, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlord.

The parties both attended and the landlord was assisted by an agent due to the landlord's language barrier. The tenant and the landlord's agent gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Should the notice to end tenancy be cancelled?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and more specifically for monthly laundry and storage facilities?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on November 15, 2009 and the tenant still resides in the rental unit. Rent in the amount of \$750.00 per month is payable in advance on the 15<sup>th</sup> day of each month, although no written tenancy

agreement exits. No security deposit or pet damage deposit were collected by the landlord.

The landlord's agent further testified that the tenant is currently in arrears of rent the sum of \$4,500.00, being unpaid rent for all of July through December, 2014. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 19, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated November 19, 2014 and contains an expected date of vacancy of November 29, 2014 for unpaid rent in the amount of \$3,750.00 that was due on November 15, 2014 and \$1,000.00 for unpaid utilities following a written demand on November 19, 2014. The utilities claim is actually for storage space and laundry facilities that the parties had agreed to at the outset of the tenancy in the amount of \$200.00 per month. The tenant paid that amount up until June, 2014 but has not paid any rent or the extra \$200.00 in July or afterwards, and no payments have been made to the landlord since the issuance of the notice.

The landlord's agent also testified that the tenant was given a notice to end tenancy on August 2, 2014 and on September 1, 2014 the landlord sent the tenant a text message. The tenant replied but didn't mention the rent. The tenant had denied having received any receipts but the landlord always provides them and the tenant has provided one as evidence for this hearing. The receipt is not dated and shows that the tenant paid \$700.00 a month for August 15, 2012 and September 15, 2012. The landlord's agent stated that it is for 2 months of rent because the tenant paid for 2 months at once. The landlord's agent also testified that the tenant was given a notice of rent increase in July, 2011 which increased the rent to \$720.00 per month, plus utilities, using the approved form and an effective date of November 15, 2011. Another notice was given in July, 2013 effective November 15, 2013 which increased the rent to \$750.00, plus \$200.00 for the utilities, and again, the approved for was used.

The landlord's agent also testified that the tenant has not been locked out of the laundry facilities as he claims, he just hasn't used them. He further testified that the landlord's mother has severe arthritis, and the laundry room is never locked. Another tenant also has access, and there is no reason to lock it. The tenant is not restricted to doing laundry one day per week as he claims, and also has access to the storage location.

The tenant testified that rent has always been \$700.00 per month which is \$650.00 for rent and \$50.00 for laundry use once a week. No demand for utilities was made to the tenant on August 2, 2014 as stated in the notice to end the tenancy. The tenant paid the landlord \$700.00 cash on July 15, 2014; \$700.00 cash on August 15, 2014; \$700.00 cash on September 15, 2014; and on October 15, 2014 the tenant paid by certified cheque after having received the notice to end tenancy to prove that he had paid it, but

as a result of receiving the notice to end tenancy he didn't pay November's rent. On December 15, 2014 he gave a bank draft in the amount of \$650.00 to the landlord's sister-in-law but she refused to take it so the tenant put the money back in his bank account, but still has the receipt.

The tenant also testified that in September, 2014 the landlord asked the tenant to move out by the end of the month, and the tenant agreed to do so. Then a week later, another resident of the landlord's household told the tenant that he didn't have to move. The tenant paid rent in full on September 15, 2014 in cash, and then was told again that he had to move out at the end of September, and then was told to talk to the landlord who said that if the tenant didn't move out, he'd throw out all the belongings of the tenant.

On September 20, the landlord's mother told the tenant he couldn't use the laundry facilities. The tenant would always call the landlord's family to unlock the door but that day she said he couldn't use it and had to move out.

On October 1, 2014 a notice to end tenancy was on the door of the rental unit. The tenant disputed it because he didn't agree with the rental portion of the notice. The tenant paid rent for July and August and never received any receipts. In 2012 the tenant was applying for a loan and needed a receipt to prove his living expenses and that was the only receipt ever given. Then the landlord returned October's rent to the tenant without any reason given and the tenant has provided a copy of a bank draft dated October 15, 2014 in the amount of \$650.00 payable to the landlord.

The parties had attended a hearing previously, after which the landlord was told that the landlord had to accept a cheque. A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was the subject of that hearing has also been provided. It is dated September 26, 2014 and contains an expected date of vacancy of October 10, 2014 for unpaid rent in the amount of \$1,500.00 that was due on September 1, 2014 and for failure to pay utilities in the amount of \$400.00 following written demand on August 2, 2014. Instead of accepting another cheque, the landlord gave the tenant another notice to end the tenancy. On December 15, 2014 the tenant gave the landlord another cheque for \$650.00 but the landlord refused it.

The tenant further testified that the tenant has not been able to use the laundry facilities since September, 2014 so he has not paid the \$50.00. He does not know where the landlord's claim of \$200.00 per month comes from.

At the conclusion of the hearing, the parties were given the opportunity to provide additional evidence, being copies of the notices of rent increase and copies of rent

receipts issued by the landlord. The tenant was to provide a copy of the receipts showing that the tenant had paid or attempted to pay rent by way of bank draft in December, 2014. The parties were also ordered to provide copies to each other. Both parties provided additional evidentiary material, all of which was received by me on December 29, 2014, however the documentation shows it was faxed on December 21, 2014.

The landlord has provided rent receipts for \$750 dated May 15, 2014; for \$750 dated February 15, 2014; for \$750 dated December 15, 2013; for \$750 dated January 15, 2014; for \$750 dated March 15, 2014; for \$750 dated June 15, 2014; for \$750 dated April 15, 2014; and a copy of a Notice of Rent Increase dated July 10, 2013 raising the rent from \$720.00 per month to \$750.00 per month and \$200 utilities commencing November 15, 2013. It also shows that the date of the last rent increase was on November 15, 2012. The landlord's evidence also contains a note indicating that he was not able to locate the Notice of Rent Increase issued in 2012. The tenant has provided a copy of a bank draft dated December 15, 2014 payable to the landlord in the amount of \$650.00.

### Analysis

Where a tenant disputes a notice to end the tenancy issued by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The notice is dated November 19, 2014 for unpaid rent in the amount of \$3,750.00 that was due on November 15, 2014 and \$1,000.00 for unpaid utilities following a written demand on November 19, 2014. With respect to the rental portion, the landlord's agent testified that the tenant hasn't paid any rent since June, 2014 and owes for July through December, 2014 in the amount of \$4,500.00, and I find that sum to be consistent with the notice. However, I also consider the previous 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that the landlord has increased the claim by one month of rent, or by \$750.00. The first notice states that the tenant failed to pay rent in the amount of \$1,500.00 that was due on September 1, 2014, and I find that it is in error and that rent wasn't due until the 15<sup>th</sup> of September, 2014. If \$1,500.00 was due for September and the tenant didn't pay rent for October through December, 2014, the balance owed to the landlord is \$3,750.00. I also find that the landlord has established that rent receipts are issued to the tenant and none exist beyond June 15, 2014, and I am satisfied that the landlord has established a monetary claim for unpaid rent in the amount of \$3,750.00.

With respect to the utilities, I accept that the parties refer to the storage room and the laundry facilities as utilities, but I am not satisfied that the landlord has established that

the parties agreed to \$200.00 per month, nor are there any receipts in the landlord's evidence showing that the amount was paid until July, 2014 as the landlord's agent testified. However, the tenant agreed that an amount was agreed to, and I accept that amount to be \$50.00 per month, and I find that the landlord is entitled to a monetary order for \$300.00. With respect to the tenant's testimony that he reduced rent for loss of the laundry and storage facility, firstly, I find that the tenant has failed to establish that and secondly, if it did happen, the tenant's recourse would be to make an application for dispute resolution to obtain an order authorizing the tenant to reduce rent. The tenant did not do so, and therefore, the tenant has no legal authorization to reduce the rent.

I am not satisfied in the evidence before me that the landlord provided the tenant with written notice to pay the utilities prior to the issuance of the notice to end the tenancy, however having found that the tenant did not pay the rent, I further find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant. The tenant's application for an order cancelling the notice is dismissed.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,100.00

The tenant's application is hereby dismissed in its entirety without leave to reapply.

These orders are final and binding and may be enforced.

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 30, 2014

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Residential Tenancy Branch

