



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR OPB MNR FF

### Introduction

This hearing dealt with the landlord's application for an order of possession and a monetary order for unpaid rent. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, the tenant confirmed that he had received the landlord's application and evidence. He also confirmed that he did not submit any evidence prior to the hearing. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The landlord and the tenant signed the tenancy agreement on June 24, 2014, and the tenant began occupying the unit on that date. The tenancy agreement does not indicate what day of the month rent is due. It appears that two amounts of rent were indicated on the agreement but then blacked out, and the amount of \$600 appears beside the blacked-out amounts. Directly below the section of the agreement indicating the amount of monthly rent is a section indicating the services and facilities that are included in the rent; water, electricity, heat and cablevision are checked off as included in the rent. On the final page of the tenancy agreement there is another area of blacked-out writing. The landlord and the tenant agreed that in this space the landlord had indicated that the tenant would pay an additional \$50 for utilities, and the tenant blacked it out and initialled it.

On November 4, 2014 the landlord served the tenant with a notice to end tenancy for unpaid rent or utilities. The notice indicates that the tenant failed to pay rent of \$600 that was due on October 25, 2014 and failed to pay utilities of \$50 following written demand on November 4, 2014.

In the hearing, the landlord stated that the tenant crossed off the note indicating that the tenant would pay \$50 for utilities, but the landlord did not agree with it. The landlord also initially stated that the rent was \$600 to start with. I asked the landlord three times whether the amount of \$600 was written on the agreement on June 24, 2014, the date that she and the tenant signed the agreement, or on a later date. After providing evasive, unclear answers, the landlord finally responded that she changed the amount of rent to \$600 on the agreement after July 3, 2014.

In her documentary evidence, the landlord submitted rent receipts showing as follows:

- (1) June 21, 2014, the tenant paid rent of \$550 "rent for July";
- (2) August 24, 2014 the tenant paid \$300 deposit and \$600 Aug;
- (3) September 24, 2014 the tenant paid \$600 Sept 2014 and \$600 Oct 2014.

In her application, the landlord applied for monetary compensation of \$1300, representing \$650 for November 2014 and \$650 for December 2014.

The tenant stated that the landlord first agreed that the rent was \$550, including utilities. The tenant stated that at the time he and the landlord were completing the tenancy agreement, the landlord agreed to the tenant crossing off the term requiring \$50 for utilities. The tenant stated that the landlord changed the rent from \$550 to \$600 without the tenant's agreement, but the tenant felt he had no choice but to pay. The tenant stated that when the landlord again increased the rent to \$650, he withheld the rent.

### Analysis

Upon consideration of the evidence, I find as follows.

I find that at the time that the tenant and the landlord entered into the tenancy agreement, the rent was \$550 including utilities. After several inconclusive, evasive answers, the landlord confirmed that she did not write the amount of \$600 on the tenancy agreement until after July 3, 2014. Further, the rent receipt dated June 21, 2014 shows that the tenant paid \$550 in rent for July 2014, and it did not indicate that any further amounts were outstanding. The other two rent receipts only indicate rent of \$600 paid for each of the months of August, September and October 2014, and do not indicate any outstanding amounts for utilities. The tenancy agreement shows that water, electricity, heat and cablevision are included in the rent. The landlord signed the tenancy agreement when the tenant crossed out the term requiring the tenant to pay \$50 for utilities, and she therefore agreed in writing to the removal of that term. I find that the rent remains at \$550 per month, including utilities. Further, as the tenancy agreement does not indicate what date rent is due, and there was no clear evidence of agreement regarding the date that rent was due, I find that the rent is due in advance on the first day of each month.

I find that the notice to end tenancy for unpaid rent is not valid. The tenant does not owe any amount for utilities. The tenant overpaid rent by \$50 for three months, and therefore the amount

of rent due on November 1, 2014 was \$550 less \$150, or \$400. I find that because the landlord indicated the incorrect amount of rent due, the notice to end tenancy is not valid, and I cancel the notice.

The tenant owes the landlord \$400 for November 2014 and \$550 for December 2014.

As the landlord's application was only partially successful, I find she is not entitled to recovery of the filing fee for the cost of the application.

### Conclusion

The landlord's application for an order of possession is dismissed. The tenancy continues until such time as it ends in accordance with the Act.

The monthly rent is \$550 including utilities, and it is due in advance on the first day of each month.

I grant the landlord an order under section 67 for the balance due of \$950. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 11, 2014

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Residential Tenancy Branch