



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants, "tenant PG" and "tenant TS," did not attend this hearing although it lasted approximately 49 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's witness, "JW," who is the landlord's husband, attended the hearing and provided testimony regarding service of documents.

The landlord gave sworn testimony that she personally served tenant PG with a 10 Day Notice to End Tenancy for Unpaid Rent, which is undated ("10 Day Notice"), on January 11, 2015. The landlord attached a signed, witnessed proof of service, with her Application. JW testified that he witnessed this service on January 11, 2015 and that he signed the proof of service document. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were served with the landlord's 10 Day Notice on January 11, 2015.

The landlord testified that she personally served each tenant with a separate copy of the Application for Dispute Resolution hearing package ("Application") on January 19, 2015. JW testified that he witnessed this service on January 19, 2015. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were served with the landlord's Application on January 19, 2015.

The landlord testified that she personally served the tenants with a one page rental advertisement document, as part of her written evidence, on January 21, 2015. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's additional written evidence on January 21, 2015.

At the outset of the hearing, the landlord withdrew her Application for an order of possession, as the tenants had vacated the rental unit on January 21, 2015, and the landlord had regained possession of the unit. Accordingly, this portion of the landlord's Application is withdrawn.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The landlord testified that this tenancy began on August 1, 2013. Monthly rent in the amount of \$1,400.00 was payable on the 1<sup>st</sup> day of each month. A security deposit of \$700.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants occupied the basement suite, while the landlord occupies the main floor of the landlord's house.

The landlord testified that no written tenancy agreement exists for this tenancy, as there was only an oral agreement. The landlord stated that an oral agreement was made with both tenants that rent would be \$1,400.00 per month and the tenants would pay half of the hydro and gas utilities for the entire house, after receiving notification from the landlord regarding the amounts owed. The landlord provided an unpublished draft of her online advertisement for the rental unit, which she says was posted in June or July 2013, prior to the tenants occupying the rental unit. The landlord stated that the advertisement was proof that the rental unit was available for \$1,400.00 per month plus half of the utilities.

The landlord testified that the tenants vacated the rental unit on January 21, 2015. The landlord stated that she was advised by the tenants that they were leaving that day. The landlord indicated that the tenants had not returned since leaving, the tenants had

left some possessions behind and the landlord has not changed the locks to the rental unit. The landlord stated that she entered the rental unit after the tenants vacated, assessed some damage, made some efforts to repair damage, and disposed of the tenants' remaining possessions.

The landlord seeks a monetary order in the total amount of \$3,438.57 for unpaid rent and utilities. The landlord amended her monetary amount, as she initially made an arithmetical error when originally requesting \$3,439.43. The landlord stated that rent in the amount of \$310.00 is unpaid for December 2014. The landlord testified that rent in the amount of \$1,400.00 is unpaid for each of January and February 2015. The landlord indicated that gas and hydro utilities totalling \$328.57 is unpaid from September to December 2014.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,710.00 and utilities in the amount of \$329.43 was due on January 1, 2015. The landlord indicated that the rent amount on the notice includes \$310.00 for unpaid December 2014 rent and \$1,400.00 for unpaid January 2015 rent. The notice indicates an effective move-out date of January 20, 2015. The landlord confirmed that the last payments towards rent were made by the tenants in the amount of \$390.00 on December 8, 2014 and \$700.00 on December 18, 2014. The landlord confirmed that no payments have been made by the tenants since the 10 Day Notice was served upon them.

The landlord confirmed that the tenants did not pay for their gas and hydro utilities for the September to December 2014 period. The landlord indicated that she paid the hydro and gas utilities on behalf of the tenants for this period, in order to prevent disconnection of their service. The landlord provided copies of these hydro and gas bills with her Application. The landlord stated that she provided all of these utility bills to the tenants, advising them of the amounts owing, when they were due. The landlord also provided receipts to the tenants for rent and utilities paid and owing from April to December 2014, as well as letters in January 2015, regarding the unpaid amounts owing. The landlord calculated half of the cost of the entire utility bills when advising the tenants about the amounts owed, as well as when making her monetary application.

The landlord stated that \$129.34 for hydro charges was unpaid by the tenants for the period from October 9 to December 8, 2014. The landlord stated that the unpaid gas utilities are as follows: \$49.34 from September 10 to October 14, 2014, \$60.96 from October 15 to November 13, 2014 and \$88.93 from November 14 to December 10, 2014. The landlord revised her earlier calculations which previously stated that \$111.16 (rather than \$110.30) was due for gas charges, indicating that \$51.00 (rather than

\$49.34) was due for the October gas bill and \$60.11 (rather than \$60.96) was due for the November gas bill.

The landlord testified that she was also seeking to recover unpaid rent of \$1,400.00 for February 2015. The landlord indicated that although the tenants vacated the rental unit on January 21, 2015, they caused a lot of damage, and left a number of their possessions as well as garbage in the rental unit. The landlord indicated that she cannot re-rent the unit in February 2015, given that she has to perform a lot of cleaning and repairs in order to restore the unit. The landlord has begun performing some repairs but has a lot of work remaining and is unsure as to when it will be completed, as it may take some time. The landlord stated that at the time of her application on January 19, 2015, the tenants had not yet vacated the rental unit, so she could not enter the rental unit to assess any possible damage or perform repairs.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the tenants.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not appear. The tenants failed to pay the full rent due on January 1, 2015, within five days of receiving the 10 Day Notice. No partial rent payments have been made by the tenants since the 10 Day Notice was served upon them. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on January 21, 2015, the corrected effective date on the 10 Day Notice. The landlord stated that the tenants vacated the rental unit on January 21, 2015.

The landlord provided undisputed evidence that the tenants failed to pay \$310.00 in rent for December 2014 and \$1,400.00 in rent for January 2015. Therefore, I find that the landlord is entitled to rental arrears in the amount of \$1,710.00 against the tenants.

The landlord testified that she was also seeking to recover unpaid rent of \$1,400.00 for February 2015. The landlord indicated her intention to make a future application to recover compensation for damage to the rental unit as well as unpaid utility bills that she had not yet received at the time that this Application was made. However, the landlord is not aware of the full extent of the damage or the repairs required, the time to complete these repairs, when she will be able to advertise the rental unit or when the unit might be occupied by potential future tenants. Given that these factors are based

on future events, the repairs may take some time and the landlord intends to make a future application for related remedies, I dismiss the landlord's application for a monetary order for unpaid rent for February 2015, with leave to reapply. The landlord is permitted to pursue this portion of her application at a future time.

The landlord testified that she continues to hold the tenants' security deposit of \$700.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that she is entitled to recover the \$50.00 filing fee paid for the Application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,388.57 against the tenants as follows:

Item	Amount
December 2014 Rent	\$1,400.00
Less partial payment made on December 8, 2014	-390.00
Less partial payment made on December 18, 2014	-700.00
January 2015 Rent	1,400.00
Gas utilities from September 10 to October 14, 2014	49.34
Gas utilities from October 15 to November 13, 2014	60.96
Gas utilities from November 14 to December 10, 2014	88.93
Hydro utilities from October 9 to December 8, 2014	129.34
Less Security Deposit	-700.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$1,388.57</b>

The landlord is provided with a monetary order in the amount of \$1,388.57 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for a monetary order for unpaid rent for February 2015, is dismissed with leave to reapply.

The landlord's application for an order of possession for unpaid rent and utilities was withdrawn.

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: February 05, 2015

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Residential Tenancy Branch

