



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, 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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing although it lasted approximately 72 minutes. The landlord and his agent, CRC (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had authority to speak on his behalf at the hearing.

The landlord testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated February 7, 2015 ("10 Day Notice"), by way of posting it to the tenants' rental unit door on the same date. The landlord attached a signed proof of service with his application, indicating that his son, PM, witnessed this service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on February 10, 2015, three days after its posting.

The landlord's agent testified that she personally served the tenant with the landlord's Application for Dispute Resolution hearing package ("Application") on February 19, 2015. The landlord's agent provided a signed statement confirming this service. The landlord testified that he witnessed this service. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's Application on February 19, 2015.

During the hearing, the landlord withdrew his application for an order of possession. Accordingly, this portion of the landlord's application is withdrawn. The landlord indicated that he no longer required this order because the tenant vacated the rental unit on March 4, 2015. The landlord stated that he changed the locks and obtained possession of the rental unit.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, utilities and money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

### Background and Evidence

The landlord testified that this month to month tenancy began on January 1, 2015 and ended on March 4, 2015. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. The landlord confirmed that as per the tenancy agreement, the tenant was required to pay 25% of the total gas and hydro costs for the rental unit. A security deposit of \$500.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant, her daughter and a male friend occupied the rental unit, which is a two bedroom house. The landlord provided a copy of the written tenancy agreement after the hearing, at my request, as he did not provide it with his Application.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,000.00 was due on February 1, 2015 and that utilities in the amount of \$135.74 was due but no due date was indicated. The 10 Day Notice indicates an effective move-out date of February 12, 2015.

The landlord originally applied for a monetary order for \$2,271.48 total. During the hearing, the landlord withdrew his claim for \$85.74, noting that it was made in error. The landlord stated rent of \$1,000.00 for each of February and March 2015 was unpaid. The landlord stated that he was seeking the entire month's rent for March 2015, as he had to wait for this hearing date before he could enter the rental unit to assess it and make any required repairs.

The landlord stated that gas and hydro utilities of \$135.74 was unpaid for the period of January 1 to February 28, 2015. The landlord testified that \$99.91 was for gas and \$35.83 was for hydro utilities. The landlord indicated that he made his own calculations which he prorated for the above time period. The landlord did not provide a copy of the gas and hydro utility bills with his Application, which he had in his possession. The

landlord did not indicate these specific utility amounts on his Application. The landlord confirmed that he was not seeking any utility amounts for March 2015.

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

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept the landlord's testimony that the tenant failed to pay \$1,000.00 in rent for February 2015, while she was still residing in the rental unit. Accordingly, the landlord is entitled to \$1,000.00 in unpaid rent for February 2015.

I do not accept that the tenant had sufficient notice of the hydro and gas utilities in the amount of \$135.74 owing from January 1 to February 28, 2015. Although this amount was indicated on the 10 Day notice, no due date was indicated. This amount would not have become due until after February 28, 2015. The landlord filed his Application on February 17, 2015 and served it on February 19, 2015. This amount was not specifically indicated in the landlord's Application. The landlord did not provide a copy of the utility bills to indicate the specific dates, time periods and amounts. Accordingly, I dismiss the landlord's claim in the amount of \$135.74 for hydro and gas utilities from January 1 to February 28, 2015, with leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual

monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant caused a loss of rent for the entire month of March 2015.

The landlord indicated that he was seeking full rent for March 2015, in the total amount of \$1,000.00. The tenant was required to vacate the rental unit by February 12, 2015, as per the 10 Day Notice. The tenant vacated the rental unit on March 4, 2015, causing loss to the landlord under section 7(1) of the *Act*. However, the landlord is required to mitigate his losses as per section 7(2) of the *Act*. As per the tenancy agreement, rent for March 2015 would have been due on March 1, 2015, if the tenant remained in the rental unit. The landlord already entered the rental unit and changed the locks immediately after the tenant vacated on March 4, 2015. The landlord did not wait to obtain an order of possession at this hearing, before entering the rental unit. The landlord even withdrew his application for an order of possession at this hearing. Therefore, I find that the landlord is entitled to half a month's rent due under the tenancy agreement, from March 1 to 15, 2015, totalling \$500.00. I find that the period from March 4, 2015 to March 15, 2015, was sufficient time for the landlord to clean and repair the rental unit, as well as advertise the unit for rental, if he wished to re-rent it.

The landlord testified that he continues to hold the tenant's security deposit of \$500.00. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's 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 he 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 \$1,050.00 against the tenant as follows:

Item	Amount
Unpaid February 2015 Rent	\$1,000.00
Half Month March 2015 Rent Loss	500.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Award</b>	<b>\$1,050.00</b>

The landlord is provided with a monetary order in the amount of \$1,050.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 an order of possession is withdrawn.

The landlord's application for a monetary order in the amount of \$135.74 for hydro and gas utilities from January 1 to February 28, 2015, is dismissed with 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: March 16, 2015

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Residential Tenancy Branch