



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR FF CNR

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 5; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) To cancel a Notice to End Tenancy for unpaid rent and/or utilities.

### SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated March 11, 2015 and of each other's Application for Dispute Resolution. One tenant vacated already and did not attend the hearing but the landlord said he was served with the documents and met him last week to say he was leaving and would not attend the hearing. I find the landlord's evidence on this credible as the tenant did vacate as stated. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that rent or utilities are owed and they are entitled to an Order of Possession and a monetary order for rental/utility arrears and to recover the filing fee for this application? Or is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in October 2014, that rent is \$1000 a month plus utilities and a security deposit of \$500 was paid on October 1, 2014. The landlord claims \$2095 (corrected to \$2575) in rent is

owed as follows: \$125 short for November 2014, \$200 short for December 2014, \$500 short for each of January, February and March 2015 and \$750 short for April 2015.

The tenant did not dispute the rental amount owing or the landlord's accounting but said he had receipts saying payments were made 'in partial payment' of the rent so the landlord knew he was trying to pay off the balance and the female landlord told him it was fine and the Notice to End Tenancy would be cancelled. He receives disability and some of the rent is paid directly and he pays the balance. He said it is difficult as the landlords were away for a few months and no one came to collect the balance of rent so he got behind without knowing. The female landlord denied agreeing that the tenant could stay and pay off the rent in partial payments. She had issued receipts 'for use and occupancy only' after the Notice to End Tenancy was given but the tenant did not understand that these receipts were not continuing the tenancy.

The landlord also claims \$646.81 for unpaid utilities as invoiced to March 2015. He said the power had been cut off due to the unpaid balance and the tenant was using extensions to the building's power. He said that the utility will not issue the final bill until the tenant vacates. The tenant did not dispute the amount owed but in his Application said it was not the landlord's concern. In the hearing, I pointed out to him that the municipality in which he resides adds any unpaid utility bills to the landlord's tax account and the landlord has to pay them so it is a matter of concern to the landlord.

In evidence is the Notice to End Tenancy for unpaid rent, the tenancy agreement, an account of the landlord, utility bills, a letter from the municipality regarding the unpaid utilities and receipts for 'use and occupancy only'.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

**Order of Possession:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord proved that rent of \$2575 is owed and utilities of \$646.81. The tenant did not dispute these amounts. I find the landlord's evidence credible and prefer it to the evidence of the tenant that there was no agreement to accept partial payments and cancel the Notice to End Tenancy for unpaid rent. The credibility of the landlord is supported by the fact that the other tenant moved out in response to the Notice and the landlord issued receipts for partial payments "for use and occupancy only" after the Notice to End Tenancy had been issued. Section 26 of the Act and the tenancy agreement state that rent is due and payable on the first of the month. I find the

tenancy ended on March 20, 2015 and the landlord is entitled to an Order of Possession effective April 30, 2015 as agreed in the hearing.

**Monetary Order:**

I find the landlord has satisfied the onus of proving on a balance of probabilities their claim for \$2575 in rent arrears and \$646.81 in utility arrears. Since the municipality requires the landlord to pay these arrears, I find the landlord may add these to the outstanding rent pursuant to section 46 (6) and obtain a monetary order for both. I give the landlord leave to reapply for further amounts owed. I find the landlord did not request that the security deposit be used to offset the amount owing so the security deposit will remain in trust to be dealt with after the tenant vacates in accordance with section 38 of the Act.

I dismiss the tenant's application to cancel the Notice to End Tenancy for the reasons stated above. The tenant had some complaints about the tenancy but he had not included them in his Application so I declined to hear them. In any case, section 26 of the Act states a tenant must pay rent when due whether or not the landlord has fulfilled their obligations under the Act.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply; no filing fees were involved. I find the landlord entitled to an Order of Possession effective April 30, 2015 and to a monetary order as calculated below. I find they are entitled to recover filing fees for this application. I give the landlord leave to reapply for further amounts owed after the tenant has vacated. The security deposit of \$500 remains in trust for the tenant to be dealt with according to section 38 of the Act.

**Calculation of Monetary Award:**

Rent Arrears and Loss to April 30, 2015	2575.00
Utility arrears to March 2015	646.81
Filing fee	50.00
Total Monetary Order to Landlord	3271.81

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: April 22, 2015

