



# 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 was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, served by registered mail on April 23, 2015. Canada Post tracking numbers were provided by the landlord in verbal testimony.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. The landlord was permitted to provide additional evidence after the hearing had concluded. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testified that this tenancy started on December 01, 2014 for a fixed term ending on May 31, 2015. Rent for this unit was \$1,600.00 per month plus the Telus bill. Rent was due on the first day of each month. The tenants paid a security deposit of \$800.00 on November 15, 2014 and a pet deposit of \$800.00 on December 01, 2014.

The landlord testified that the tenants failed to pay rent for April, 2015. The landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent on April 03, 2015 in person. This Notice informed the tenants that rent is owed for April of \$1,600.00. The Notice also informed the tenants that they have five days to either pay the rent or dispute the Notice or the tenancy will end on April 13, 2015. The landlord testified that the tenants did not pay April's rent and have continued to have possession of the unit until May, 2015. The landlord testified that the tenants had sublet the lower level of the rental unit and resided in the upper level. The tenants vacated on May 03, 2015; however, the unauthorised sublet tenants did not vacate until May 10, 2015.

The landlord testified that the tenants have failed to pay the Telus bill of \$177.22. The landlord seeks to recover this amount from the tenants. The landlord agreed that the tenants have not been sent a copy of this bill with a written demand for payment.

The landlord seeks an Order to keep the security and pet deposits to offset against the outstanding rent and a Monetary Order to recover the filing fee of \$50.00.

### Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been served a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have considered the landlord's documentary evidence and sworn testimony before me. Section 26 of the *Act* states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied with the evidence before me that the tenants failed to pay rent for April, 2015 of \$1,600.00. Consequently, the landlord has established a claim to keep the tenants' security and pet deposit of **\$1,600.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

With regard to the landlord's claim to recover the amount of \$177.22 for the Telus bill; when a tenant is responsible for any utility bills and these bills are in the landlord's name; the landlord is required to send the tenants a copy of the bill with a written demand for payment within 30 days. If the tenants then fail to pay the bill as directed the landlord may file an application to recover the amount of the bill. As the landlord has not yet sent the bill to the tenants then the landlord's application to recover the amount shown on the bill is premature. This section of the landlord's claim is dismissed with leave to reapply.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may keep the tenants' security and pet deposit to an amount of \$1,600.00. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The Order must be

served on the tenants; if the tenants fail to comply with the Order, the Order is enforceable through the Provincial Court 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: June 04, 2015

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Residential Tenancy Branch

