



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, OPB, MNR, MNSD, MNDC

### Introduction and Preliminary Matters

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, cause and breach of an agreement, a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

K.B., the named Landlord on the application for dispute resolution, as well as the Tenant, M.S. appeared at the hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties agreed that S.B. was the property owner and Landlord named on the tenancy agreement. At the outset of the hearing, the parties confirmed that a previous hearing had occurred on May 20, 2015 and June 30, 2015 between the Tenants and S.B. (the "Previous Hearing"). In a decision dated June 3, 2015 my fellow Arbitrator found the 1 Month Notice to End Tenancy for Cause dated April 1, 2015 to be valid and granted the S.B.'s Landlord's oral request for an Order of Possession.

K.B. attended the Previous Hearing with S.B., and was identified as the "Mother and Property Manager". In the within hearing, only K.B. attended. She also issued the Landlord's Application for Dispute Resolution naming herself as Landlord.

Introduced in evidence was a letter from S.B., dated April 9, 2015, wherein she wrote that she gave permission to K.B. to manage the property while she is away. In this letter she also confirms K.B. was authorized to issue the 1 Month notice.

The *Act* defines landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Based on the foregoing, I find the K.B. is the Landlord for the purposes of the present hearing.

In the June 3, 2015 Decision from the Previous Hearing an Order of Possession was granted; accordingly, the Landlord's request for an Order of Possession in the present hearing is not required and is therefore dismissed.

The Tenant, M.S. testified that the Landlord left one mail package in the Tenant's mailbox containing the Landlord's application and notice of hearing and that the package was directed to M.S. M.S. confirmed that the Landlord did not send a similar package for D.S. The Landlord did not dispute M.S.'s information. While leaving the application package in the mailbox is not effective service pursuant to section 89, M.S. was at the hearing and accordingly acknowledges service.

However, as a similar package was not left for D.S., he was not served pursuant to section 89; accordingly, my decision and any resulting Order applies only to M.S. The

Landlord is at liberty to reapply for dispute resolution in relation to D.S. should she so choose.

On the Landlord's Application for Dispute Resolution filed May 11, 2015, the Landlord indicated she sought the sum of \$252.81 and in the Details of Dispute section, the Landlord wrote that she was seeking a monetary order for the outstanding electricity bill. During the hearing, the Landlord testified that the Tenants moved from the rental unit on June 7<sup>th</sup>, without paying rent for June 2015. As such, at the hearing she confirmed that she also sought the sum of \$1,400.00 for June's rent.

I find that the Application filed on May 11, 2015 does not clearly indicate the Landlord sought compensation for outstanding rent, and as such, the Tenants may not have been given proper notice of such a request. Further, there was no evidence submitted with respect to the Landlord's obligation to mitigate such loss. In the circumstances, I dismiss the Landlord's application for unpaid rent with leave to reapply.

The Landlord also checked off the box which indicated she was requesting an Order that she be permitted to retain the \$600.00 security deposit. However, at the time she made the within application, on May 11, 2015, the tenancy had not ended. I find the application to be premature and accordingly I dismiss her application with leave to reapply.

Further, M.S. confirmed that she had not provided the Landlord with a forwarding address as she refused to have the Landlord know where she lived. During the hearing, altered position and provided the Landlord with her forwarding address. The Landlord has 15 days from the date of receipt of this my decision to return the security deposit, or make an application to retain the deposit.

At the conclusion of the Landlord's testimony she stated that the Tenants left the rental unit in such a state that the Landlord incurred the cost of cleaning and repair. She confirmed that she had not provided any evidence to support this claim for compensation as at the time she filed the Tenants were in occupation. Again, I find this application to be premature, and I dismiss with leave to reapply her application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

#### Issue to be Decided

- Is the Landlord entitled to a monetary Order for unpaid utilities?

### Background and Evidence

Introduced in evidence was a one page "Rental Agreement" dated February 15, 2014 which was signed by one of the Tenants. It is unclear who signed it. In any case, the Rental Agreement provided as follows:

*I further agree to pay for electricity and telephone charges for the period of my tenancy.*

Despite this document, at the hearing the Landlord testified that the tenancy agreement did *not* specifically provide that the Tenants were to pay for the electricity bill and she submitted that the Tenants verbally agreed to pay the electricity bill in addition to rent.

The Landlord did not submit a copy of the electricity bill, nor did she submit any evidence which would show that she requested payment of the bill from the Tenants.

M.S. testified that that the monthly rent was \$1,400.00 and included utilities. She further stated that in the sixteen months of the tenancy the Tenants never paid utilities and that to her knowledge, the utilities were in the name of the downstairs tenants.

### Analysis

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim for \$252.81 for unpaid utilities.

Although the Rental Agreement appears to provide that the Tenants are to pay the electricity costs, the Landlord testified it was an oral agreement. M.S. denied any such agreement existed and stated that the utilities were in fact in the downstairs occupants' name.

I am unable to reconcile this evidence, and as such, I am unable to find, based on the evidence of the parties, and a balance of probabilities, that any agreement existed with respect to the payment of the electricity bill.

The Landlord also failed to introduce a copy of the electricity bill and as such she has failed to provide proof of the actual loss, or the amount required to compensate her for the claimed loss with respect to the electricity bill.

Accordingly, the Landlord's claim for compensation for the sum of \$252.81 is dismissed.

### Conclusion

The Landlord's request for an Order of Possession is dismissed having already been granted on June 3, 2015 at the Previous Hearing.

The Landlord's request for a Monetary Order pursuant to section 67 for damage to the rental unit, or loss for either cleaning or unpaid rent is dismissed with leave to reapply.

The Landlord's request to retain the security deposit is dismissed with leave to reapply.

**The Landlord must either return the security deposit or make a further application to retain it within 15 days of the date of this my decision.**

The Landlord failed to prove an agreement existed with respect to the payment of the electricity bill, and failed to prove the amount of the claimed loss, or the amount required to compensate her for this alleged loss; accordingly, her request for monetary compensation for the unpaid electricity bill is dismissed.

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: July 08, 2015

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Residential Tenancy Branch

