



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

Both landlords and the tenant attended the hearing and each gave affirmed testimony. With the consent of the landlords, the tenant was also accompanied by a friend for support, who did not testify or take part in the proceedings. The parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The first landlord** testified that this month-to-month tenancy began on November 2, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$450.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$200.00 which is still held in trust by the landlords, and no pet damage deposit was collected. No written tenancy agreement was prepared.

The landlord further testified that the tenant has not paid any rent for June, July or August, 2015 and is currently in arrears the sum of \$1,350.00. The landlord served the tenant with a notice to end the tenancy and have provided a copy. The notice is dated June 3, 2015 and contains an effective date of vacancy of June 3, 2015 for unpaid rent in the amount of \$450.090 that was due on June 1, 2015 and \$49.66 of unpaid utilities following a written demand on June 3, 2015. It is a 4-page form and only pages 1 and 2 have been provided. The form shows a form number on the bottom in small print, with a date of 06/2004.

The landlord further testified that he completes a reading of the hydro meter about every month. BC Hydro charges a certain amount per kilowatt, and his spouse completes a calculation for the tenant's share and a note is placed in the tenant's mailbox. The rental unit is a 10' X 50' manufactured home with an addition. The landlords live on the property as well as the landlords' son. There are 4 homes on the farm and a cabin. The landlords farm a few cows and hay. The rental unit has its own hydro meter.

The tenant had told the landlords that she would move out on August 3, 2015 and the landlords attended the rental unit. She didn't move out and the landlords told the tenant that they wouldn't keep paying for her hydro. The tenant owes \$117.00 and the landlords have not received any payments, the tenant told the landlords that she wouldn't pay the hydro, and the landlord testified that his wife told the tenant hydro would be disconnected. The tenant refused to pay so they disconnected the hydro that day.

The landlords seek an Order of Possession and a monetary order for \$1,350.00 for unpaid rent and \$117.00 for hydro usage, as well as recovery of the \$50.00 filing fee.

**The second landlord** testified that she served the notice to end the tenancy on June 3, 2015 by attaching it to the door of the rental unit. The tenant has not served the landlords with an application for dispute resolution disputing the notice.

The landlord further testified that she contacted BC Hydro for rate costs and there are 2 steps. The first is quite expensive at \$1.18 per kilowatt, and step 2 is \$0.1150 per kilowatt. The landlord uses the lower amount to calculate the tenant's portion. She took a meter reading on November 4, 2014 and another on July 15, 2015 and the usage was 2,809 kilowatts which amounts to \$323.04. The tenant paid the landlords \$206.04 but still owes \$117.00. The landlord prepares the notes and gives them to the tenant every month before the end of the month so that the tenant can pay it with the rent. The tenant told the landlord recently that she lost the bill for May. The landlords were gone from June 20 to July 10, and on July 21 the landlord gave another note showing that \$117.00 is owing to July 15, which is when the meter was upgraded to a digital meter.

The tenant also owes 3 month's rent to the end of August, 2015.

**The tenant** testified that on June 1, 2015 she asked the landlords for all hydro receipts to show to Social Services. The rate went up from \$33.00 per month to \$52.88.

In March, 2015 the tenant told the landlord to not fill the oil tank, but they got it filled anyway and the tenant had to pay \$522.00. That was paid over time to the landlords, but the tenant couldn't pay the rent.

### Analysis

The *Residential Tenancy Act* states that in order to be effective, a notice to end a tenancy given by a landlord must be in the approved form. In this case, the landlords have issued a notice but have only provided the first 2 of 4 pages. It shows that information for tenants is shown on page 3, but that page has not been provided and there is no way of knowing how many pages were served on the tenant. Also, I find that the form used is a version from June, 2004 which is outdated, and is not the approved form. Therefore, I am not satisfied that the landlords have established that the notice was issued in accordance with the *Residential Tenancy Act*, and the application for an Order of Possession cannot succeed.

With respect to the unpaid rent, there is no dispute that the tenant has not paid any rent for June, July or August, 2015, and I find that the landlords have established a monetary claim for \$1,350.00. If the tenant does not pay the rent, the landlords may issue another notice to end the tenancy in the approved form. The tenant will have 5 days to pay the rent in full, in which case the notice would have no effect, or dispute it within

that 5 day period. The *Act* also states that if the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the notice.

With respect to the landlords' claim for unpaid utilities, there is no dispute that the tenant paid for the oil and for hydro at the beginning of the tenancy. The landlord testified that BC Hydro gave her amounts that they charge for usage and the landlords use the lower amount to calculate the tenant's share. I accept the tenant's position that she wanted a copy of the actual bill to give to Social Services, but the landlord gave the tenant what she always did. If that didn't satisfy the tenant or Social Services, the tenant ought to have communicated that. I find the calculation to be reasonable, it is contained in the notice to end the tenancy, the tenant has not filed a dispute against it, and I find that the landlords have established a claim for \$117.00.

Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$50.00 filing fee.

With respect to the security deposit, since the landlords have not been successful in obtaining an Order of Possession, I decline to order the landlords to keep it. The *Residential Tenancy Act* states that a landlord must return a security deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the tenant may be entitled to double. If the tenant fails to provide a forwarding address in writing within a year after the end of the tenancy, the landlord may keep the security deposit. Therefore, I find it premature to deal with it at this point.

The landlords have not led any evidence respecting damages, and I dismiss the landlords' claims for monetary orders for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

In summary, the landlords' application for an Order of Possession is dismissed; the landlords' application for an order permitting the landlords to keep the security deposit is dismissed with leave to reapply; the landlords' application for monetary compensation for damages is dismissed with leave to reapply. I hereby grant a monetary order in favour of the landlords in the amount of \$1,517.00, being \$1,350.00 for unpaid rent, \$117.00 for unpaid utilities, and \$50.00 as recovery of the filing fee.

### Conclusion

For the reasons set out above, I hereby dismiss the landlords' application for an Order of Possession.

I further dismiss the monetary application for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, with leave to reapply.

I further dismiss the application for an order permitting the landlords to keep the security deposit, with leave to reapply.

I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,517.00.

This order is final and binding and may be enforced.

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: August 06, 2015

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Residential Tenancy Branch

