



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, FF  
                                 CNR

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The parties both attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness respecting the evidence and testimony 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.

During the course of the hearing, the parties advised that the tenant has vacated the rental unit, and therefore the tenant's application is withdrawn.

### Issue(s) to be Decided

The issue remaining to be decided is: Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

### Background and Evidence

**The landlord** testified that the tenant moved into the rental unit without the landlord's knowledge while the landlord had a valid fixed-term tenancy with another tenant (hereafter referred to as BT), and believes the tenant moved in around July 1, 2014. A copy of the tenancy agreement has been provided which is an agreement between the

landlord and the tenant, BT commencing July 1, 2014 and ending on June 30, 2015, thereafter reverting to a month-to-month tenancy. Rent in the amount of \$2,400.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and the landlord testified that the tenant, BT was present at the rental unit whenever the landlord gave notice to attend. The landlord collected a security deposit from that tenant at the commencement of the tenancy in the amount of \$1,200.00 which is still held by the landlord.

The parties to this dispute had attended a dispute resolution hearing in September, 2015 wherein the tenant was deemed to be a squatter, and the landlord obtained an immediate Order of Possession, and the tenant vacated the rental unit on October 3, 2015. The Arbitrator ordered the landlord to keep the security deposit because the tenant had not paid rent for the month of July, 2015.

The landlord further testified that he had agreed to allow the tenant to stay in the rental unit for the month of July, 2015 for the amount of \$1,200.00, for use and occupancy only if the tenant abided by certain terms, such as to keep the rental unit clean and undamaged, and would vacate by the end of July, but the tenant did not comply. The tenant over-held, did not keep the rental unit clean, and the sum of \$1,200.00 was never intended to be the full amount of rent payable for subsequent months. The bank foreclosed on the property and the landlord has listed it for sale as of October 13, 2015.

The landlord claims unpaid rent for the months of August, September and October, 2015 at the rate of \$2,400.00 per month.

The utilities were not included in the rent and the water utility was in the tenant's name. The tenant didn't pay it, and it was added to the landlord's property taxes in the amount of \$87.21. A copy of the invoice has been provided.

The tenant further failed to pay other utilities, and the landlord claims another water bill covering the period of July 2, 2015 to August 17, 2015 in the amount of \$133.70, and a copy has been provided. Also provided is evidence of an electricity bill in the amount of \$493.68, and a gas bill for \$61.27.

The landlord has also provided a Monetary Order Worksheet setting out those amounts as well as estimates for \$173.30 for gas from July 24 to September 30; \$127.89 for water; and \$222.95 for gas to September 30. The landlord estimated those amounts by looking at previous bills, dividing them by the number of days in the month, and multiplying the total by the number of days to the end of September from the last bill..

**The landlord's witness** testified that he was present at the rental unit at the landlord's request on or about July 3, 2015. A police officer was there and the parties had a

conversation which seemed to be about an issue with non-payment of rent. The landlord had told the tenant he would have to vacate the rental unit and the tenant replied that he was in the process of doing that and needed until the end of the month. The landlord agreed that some rent would be paid for the month of July, and the tenant was moving out and should be out by the end of the month. The landlord did not extend the tenancy for 3 months.

**The tenant** testified that he moved into the rental in 2009 and signed a tenancy agreement with the landlord. The tenant has not provided a copy stating that his documentation is packed away. About half way through the tenancy the tenancy agreement was changed to put it in the name of the person who appears on the tenancy agreement provided by the landlord (BT), but the tenant never moved out.

On June 28, 2015 the tenant received documents from a process server about foreclosure on the rental property, and having not heard anything from the landlord, the tenant was worried about the bank kicking the tenant out even if rent was paid, so the tenant held back July's rent.

The parties agreed to rent in the amount of \$1,200.00 with a police officer in attendance, and on July 1, 2015 the landlord agreed to let the tenant stay for 3 months., being August, September and October, 2015. The tenant paid \$1,200.00 for July and \$600.00 for August and then the landlord issued a notice to end the tenancy for unpaid rent or utilities on August 8, 2015. The tenant agrees that he owes the landlord half of August rent and all of September at the rate of \$1,200.00 per month, in addition to the outstanding utilities claimed by the landlord. Copies of emails exchanged between the parties have been provided, as well as copies of e-transfers on July 31, 2015 in the amount of \$600.00, \$600.00 on July 17, 2015; and \$600.00 on July 1, 2015.

The tenant also testified that he rented out the lower level of the rental home to another person who paid the tenant \$1,200.00 per month, but that person moved out in June, 2015.

### Analysis

I have reviewed the evidentiary material, and I am not satisfied that the landlord agreed to reduce rent indefinitely, or for 3 months by half. The tenant was collecting rent from another tenant in the lower level, and once that tenant moved out, the tenant obviously could not afford to pay the entire amount. I accept the testimony of the landlord that he agreed to reduce rent for the month of July only, and considering the testimony of the landlord's witness and the emails provided as evidence, I am satisfied that the agreement to that effect was on the condition that the tenant move out by the end of

July, 2015. The tenant did not move out, and having reviewed the evidentiary material of the tenant, I find that the landlord has established a claim for unpaid rent, in addition to that previously ordered in the amount of \$1,800.00 for August and \$2,400.00 for September, 2015.

With respect to October's rent, in order to be successful, the landlord would have to establish what efforts the landlord made to re-rent the rental unit. The landlord has listed the rental unit for rent, and due to the foreclosure proceedings, I am not satisfied that the tenant is responsible for any loss, other than the 3 days that the tenant resided there, and I grant the landlord monetary compensation in the amount of \$232.25.

The tenant agrees that utilities are owed to the landlord, and I order the tenant to reimburse the landlord for those costs in the amount of \$1,300.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of \$100.00 filing fee.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,832.25.

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: October 23, 2015

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Residential Tenancy Branch

