



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPR, MNR, O, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on a One Month Notice to End Tenancy for cause, for an order of possession based on a 10 day Notice to End Tenancy for unpaid rent and utilities, a monetary order for unpaid rent and utilities, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application. The Application was made under the *Residential Tenancy Act* (the “Act”).

Only the Agent for the Landlord appeared at the hearing (herein referred to as the “Landlord”). They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. 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.

### Issues with Service with a Monetary Claim

The Landlord testified that due to prior problems at the rental unit they went with the police to serve the Tenants with the Notice of Hearing and their Application. The Landlord testified that neither the Tenants nor any occupants were present when they arrived. The Landlord placed the documents in the rental unit in a conspicuous place at the direction of the police attending. Under the Act documents served this way are deemed served three days later. I find the Tenants were duly served in accordance with section 89(2) of the Act.

However, despite the findings I made at the hearing with respect to the monetary orders requested by the Landlord, I find I must now dismiss the Landlord’s claims for monetary relief with leave to reapply.

The Landlord did not serve the Tenants in the correct manner in order to be granted a monetary order for unpaid rent and utilities. The Landlord must file again for the monetary claims and use the correct method of service, in accordance with section 89(1) of the Act, such as service in person, by registered mail to the address where the Tenants reside or a forwarding address provided by them, or may make an application for an order for substituted service, for example at the place of employment of the Tenants.

I note in monetary claims each of the Tenants must be served individually by using one of the above methods, in order to get an order against either of the Tenants. The Landlord may also choose to proceed against only one of the Tenants as they are jointly and severally liable under the tenancy agreement for all the rent or utilities.

Nevertheless, the service method used by the Landlord is sufficient for determining the issue of the order of possession.

#### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order of possession?

#### Background and Evidence

Based on the testimony of the Landlord, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of utilities on February 18, 2015, in person on one of the Tenants (the "10 day Notice").

The Notice informed the Tenants that the Notice would be cancelled if the rent or utilities were paid within five days of service. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. The Landlord testified that the Tenants had failed to pay these utilities. Under the provisions of section 46 of the Act, unpaid utilities may be treated as unpaid rent.

On February 18, 2015, the Landlord also served the Tenants with a One Month Notice to End Tenancy for cause (the "Cause Notice"). Among other causes listed, the Landlord indicated there were an unreasonable amount of occupants in the rental unit and that the Tenants had caused damage to the rental unit property. According to the testimony of the Landlord, the police had attended the rental unit on several occasions

and informed him there were activities associated with the drug trade taking place at the rental unit.

Nevertheless, the Landlord informed the Tenants that he would not enforce the Cause Notice if the rental unit was repaired and that no further illegal activities occurred at the rental unit. The Landlord testified that the Tenants did not pay the utilities owed, did not complete all the repairs, and the police continued to attend the rental unit. On July 15, 2015, the Landlord wrote and informed the Tenants that he was enforcing the Cause Notice and the 10 day Notice.

There is no evidence that the Tenants filed an application to dispute either the Cause Notice or the 10 Day Notice.

Lastly, the Landlord testified that he believes the Tenants have vacated the rental unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding utilities and did not apply to dispute the 10 Day Notice or the Cause Notice. I find the Landlord did not reinstate the tenancy when he provided the Tenants an opportunity to make repairs before enforcing either of the Notices to End Tenancy.

I find the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice, February 28, 2015, and are conclusively presumed under section 47(5) to have accepted the end of the tenancy on March 31, 2015, the corrected effective date of the Cause Notice.

Therefore, and considering the Tenants have already vacated the rental unit, I find that the Landlord is entitled to an order of possession effective at **1:00 p.m. October 30, 2015**. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is at liberty to apply for monetary orders for unpaid rent, for costs of repairing and cleaning the rental unit and other costs associated with the breaches of the Act or tenancy agreement by the Tenants.

The Landlord may deduct **\$50.00** from the security deposit for the cost of this Application.

Lastly, the Landlord was advised to consult with an Information officer regarding the abandonment provisions under the regulations to the Act.

### Conclusion

The Tenants failed to pay utilities and did not file to dispute the 10 day Notice to End Tenancy or the One Month Notice to End Tenancy for cause. The Tenants are presumed under the law to have accepted that the tenancy ended on the respective effective dates of the two different Notices to End Tenancy described above.

The Landlord is granted an order of possession, and may keep \$50.00 from the security deposit for the filing fee for the cost of the Application.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 29, 2015

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Residential Tenancy Branch

