



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNR, FF (Tenant's Application)  
OPR, MNR, MND, MNSD, FF (Landlord's Application)

### Introduction

This hearing convened as a result of cross applications. In the Application for Dispute Resolution by the Landlord they sought an Order of Possession based on a Notice to End Tenancy for Unpaid Rent or Utilities issued April 13, 2015 (the "Notice"), a Monetary Order for unpaid utilities, an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application. The Tenant sought an Order canceling the Notice and to recover the filing fee.

This hearing occurred on three separate days; both parties appeared at the hearing on May 28, 2015, July 24, 2015 and October 13, 2015 at which time the hearing concluded. The Landlord was represented by his property manager, D.L. The Tenant was at the hearing and was assisted by her husband, S.F., who made the majority of the Tenant's submissions.

The hearing process was explained and the participants were asked if they had any questions.

The parties agreed that all evidence that each party submitted to the Branch had been exchanged. Although issues with respect to service or delivery of documents or evidence was initially raised by both parties, the parties agreed that all evidence exchanged prior to the hearing was to be considered.

The parties also agreed that the January 15, 2009 decision of the Residential Tenancy Branch was to be considered in this my Decision.

### Issues to be Decided

1. Are the Landlords entitled to an Order of Possession for unpaid utilities?
2. Should the Notice be cancelled?
3. Are the Landlords entitled to a Monetary Order for unpaid utilities?

4. Should either party recover the filing fee?

Background and Evidence

Introduced in evidence was a document titled "Rental Application and Tenancy Conditions", signed November 28, 2004, and which the Landlords claimed was the residential tenancy agreement (the "Tenancy Agreement"). This document indicated that rent was originally payable in the amount of \$1,700.00 per month. Pursuant to the Tenancy Agreement, the Tenant was responsible for paying the utilities. At the time of the hearing the rent was \$1,872.00.

The rental unit is located in the upstairs of a house owned by the Landlords. The Landlords testified that the rental unit included the entire upstairs, in addition to an entry way, den and utility storage area on the lower floor. The Landlords estimated that the Tenant had access to approximately 60% of the total square footage of the house.

The basement suite is also rented. D.L. testified that at times the downstairs renter has had their utilities included in their rent, or paid a percentage of utilities, or a flat rate towards utilities.

The Landlords testified that for many years the Tenant refused to put the utilities in his name. Introduced in evidence were numerous letters from the Landlords to the Tenant wherein the Landlords makes this demand. The Landlords conceded at the hearing before me that such a requirement is unconscionable as the utility account related not only the rental unit, but for the basement suite such that had they put the account in her name she would have been expected to collect payment from the basement suite renters. The Landlords confirmed that at the time of the hearing the utility accounts were in the corporate Landlords' name.

The Landlords testified that the Tenant is provided with copies of the utility invoices rendered by the utility companies as and when the invoices are received by the Landlords each month. The Tenant denied this was the case. In any event, the Landlords failed to provide *in evidence* copies of the utility invoices rendered by the utility companies.

A previous hearing occurred between the parties which resulted in a decision being made January 15, 2009. In this decision, the presiding arbitrator found that the Tenant was responsible for paying 70% of the utilities.

The Landlords testified that at the time of the hearing the Tenant was responsible for paying 45% of the utilities. This amount was confirmed in a letter dated February 18, 2011, from the Landlords to the Tenant (a copy of which was provided in evidence).

The Landlords testified that they provide the Tenant with the invoices and the Tenant refuses or neglects to pay. As a result, the Landlords served the Notice by registered mail on April 14, 2015. The Notice indicated utilities were outstanding in the amount of \$2,694.64. The Notice

also indicates that rent was owed in the amount of \$872.00. The Landlords confirmed that upon receiving the Notice the Tenant paid the outstanding amounts relating to the rent.

The Landlords submitted internal accounting records which they advised were checked by several people. In these documents various write offs were noted. The Landlords did not explain any of these write offs.

At the conclusion of the Landlords' case on July 24, 2015, I summarized her submissions and she confirmed the accuracy of my summation.

### *TENANT'S EVIDENCE*

S.F. testified that the Tenant disputes the amounts claimed by the Landlords for the Tenant's contribution to utilities. He submitted that the accounting records provided by the Landlord were inaccurate and possibly fabricated and that he suspects the amounts requested are for more than 45% of the amounts charged for utilities.

S.F. further testified that prior to 2009 they received copies of all the electricity and gas utility bills which had been rendered by the utility companies. He further stated that in 2010, the Landlords' management structure changed and they were no longer provided with the actual bills from the utility companies. He testified that during the years 2010 to 2011, he did not receive any invoices. When he called and asked the Landlord to provide him copies, he was provided an invoice for \$1,000.00. He said that to pay this amount off he began paying an additional sum of \$150.00 per month.

S.F. also testified that he has spoken to neighbours who have homes of similar size and pay considerably less for utilities. He stated that his 45% portion per year is approximately \$2,400.00, yet his neighbours on either side of the rental home, with a similar houses and floor plans, pay approximately \$2,000.00 per year for the entire home. He submitted that it is likely he is being asked to pay the entire utility bills, not simply a 45% portion.

S.F. further testified that the only request for payment of utilities that he had received in 2015 was a request on January 6, 2015 for \$191.25 and this amount related to utility charges from 2014. He stated that no request for payment of utilities for 2015 had been made.

S.F. stated that when he received the Landlord's accounting records, which purport to explain the \$3,566.64 owed for utilities, he discovered the records include charges from 2007. He also noted that these records indicate various write offs were made, without any explanation.

S.F. further testified that the records submitted by the Landlords were inaccurate. As an example, he noted that according to the Landlords' records a payment made on October 10, 2008 was noted as for \$275.24 and paid by cheque #43. The Tenant provided a copy of cheque #43 in evidence, which was written on September 29, 2008, and the amount was clearly

noted as \$691.72. The Tenant further testified that when he brought these discrepancies to the Landlords' attention prior to the hearing, they responded by asking him to pay \$2,700.00, rather than the amount claimed. He stated that while he is prepared to discuss the amount owing, he wants to see the actual invoices from the utility companies before he pays the amounts requested as he believes the Landlords records are not accurate and possibly they are attempting to have him pay the full amount.

#### *LANDLORD'S REPLY*

The Landlords called J.W. as a witness at the October 13, 2015 hearing. She was excluded as a witness as the Tenant had yet to finish his testimony.

During the hearing I could hear the Landlords' agent, D.L., typing as the Tenant was testifying. I then asked her if she was providing information to J.W. D.L. immediately apologized. Later during the Tenant's testimony, I heard D.L. typing again. When I cautioned her about coaching her witness, D.L. disconnected from the line. When she reconnected, she informed me that she was not typing, but writing notes on a piece of paper.

In reply to the Tenant's evidence, D.L. stated the Landlords have had several property managers and they realize this is an issue. She said that as a result of these changes, they have had to write off outstanding amounts.

J.W. was then called as a witness for the Landlords. She stated that she was an employee of the corporate Landlord from September 2012 to December 2014. She stated that it was her normal practice to prepare payment for utilities, and then send an invoice and covering letter with the copy of the utility bills received by the utility company to the tenants. She stated that the Landlord had approximately 200 rentals and that aside from two rentals (including the subject rental unit) all renters paid their utilities directly.

After J.W. had testified, D.L. continued her submissions and confirmed that the Landlords had yet to send the Tenant any request for payment for any of the 2015 utilities. She apologized for this and stated that it was "impossible to bring all the invoices up to date" as they were "hiring a new person". She further confirmed they expected, once a request for payment was sent to the Tenant for the 2015 utilities, to receive monthly payments towards these amounts recognizing that the Tenant would be unlikely to pay the full amount when requested.

#### Analysis

The *Residential Tenancy Act* provides that if a tenancy agreement requires a tenant to pay utilities to the Landlord, and the payment remains outstanding for more than 30 days after the Landlord has issued a written demand to the tenant, the Landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to section 46.

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

The Landlords failed to provide in evidence copies of the actual invoices provided by the utility companies to the Landlord. As I was not provided the benefit of the actual invoices, I am not able to find that the amounts claimed by the Landlords are in fact owed by the Tenant for their share of the utilities.

While I accept J.W.'s testimony that her "usual practice" is to send out a copy of the invoices rendered by the utility companies at the same time she requests payment, I am unable to find that she did so in respect of this rental unit. I find it possible that she was receiving information from D.L. while she was excluded from the hearing and as such, this information may have affected her testimony.

More importantly, I find that the Landlords failed to provide any documentary evidence that would support a finding that the Landlords, or their employees, provided the Tenants with copies of the original invoices rendered by the utility companies.

The Landlords were well aware the Tenant disputed the amounts claimed as the issue of the Tenant's contribution to utilities has been outstanding for many years and has been the subject of at least one prior arbitration.

I accept the Tenants' evidence that he has also not received copies of the invoices provided by the utility companies to the Landlord. Understandably, without the benefit of the invoices from the utility companies, the Tenant questions the amounts claimed by the Landlords.

S.F. provided compelling submissions with respect to possible inaccuracies in the Landlords' internal accounting records. A review of those records also confirm that various unexplained write offs also occurred. D.L. conceded that accounting issues arose as a consequence of staffing changes, and further advised that the Tenant had not been provided with any invoices for utilities in 2015 as they were "hiring a new person". While she apologized for this oversight, such practice calls into question the accuracy of the Landlords' accounting practices as they relate to the collection of utility payment from the Tenant for this rental unit.

D.L. testified that at times the renter in the basement suite in which the rental unit was located paid an all-inclusive rate, a flat rate for utilities, or a percentage. As that renter has not remained constant, the arrangement for payment has similarly fluctuated.

I find that the parties agreed the Tenant would pay 45% of the utilities. The Tenant rightfully requested copies of the actual invoices to ensure the amount requested was in fact 45% of the total amount charged for both the rental unit and the basement suite.

As a result of the above, I am unable to find that the amount claimed by the Landlords for outstanding utilities is in fact outstanding. Consequently, I find that the Landlords have failed to prove the amounts claimed on the Notice for unpaid utilities were in fact not paid. The Notice is cancelled and the tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

I Order, pursuant to section 62(3), that the Landlords must not request payment from the Tenant for any utilities unless the Landlords' request for payment is accompanied by a copy of the *original* invoice rendered by the utility company for the subject rental property, and the request for payment is made within 7 days of receipt of the original invoice from the utility company. As D.L. testified that no requests have been made for payment of the 2015 utilities, I Order that the Landlords may not request payment of utilities for any time period prior to the date of this my Order, including any outstanding amounts which may have arisen due the Landlords not paying the accounts as rendered.

As the Tenant has been substantially successful, she is entitled to recovery of the \$50.00 filing fee and may reduce her next months' rent by \$50.00.

#### Conclusion

The Landlords failed to provide copies of the invoices rendered by the utility companies to confirm the amounts noted on the Notice. The Landlords failed to prove the amounts were outstanding and the Notice is cancelled.

Pursuant to section 62(3) of the *Residential Tenancy Act*, the Landlords may not request payment from the Tenant for utilities unless the request for payment is accompanied by a copy of the original invoice rendered by the utility company, and is made within 7 days of receipt of the original invoice rendered by the utility company. As the Landlords confirmed no request for payment had been made for 2015, the Landlords are prohibited from requesting payment from the Tenant for any utilities prior to the date of this my Decision.

The Tenant is entitled to recover the \$50.00 filing fee by reducing her next month's rent payment by \$50.00.

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 27, 2015

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Residential Tenancy Branch

