



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPR, OPC, OPB, MNR, O, FF

For the tenant – CNR, CNC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for Order of Possession for unpaid rent or utilities; for an Order of Possession for Cause; for an Order of Possession because the tenant breached an agreement with the landlord; for a Monetary Order for unpaid rent or utilities; other issues; and to recover the filing fee from the tenant for the cost of this application. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent; to cancel a One Month Notice to End Tenancy for Cause; and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws their application for the Orders of Possession and the tenant withdraws her application to cancel the Notices.

### Preliminary Issues

The landlord requested that I consider an amendment to her application for a monetary order for damages to the unit, site or property. The tenant requested that I consider an amendment to her application for money owed or compensation for damage or loss. In the absence of a formal and

proper application for these issues from either party, I declined to hear or determine those issues, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent or utilities?

Background and Evidence

The parties agreed that this tenancy started on December 01, 2011 for a fixed term that was not due to end until December 31, 2012; however, a new tenancy agreement was entered into on April 01, 2012 for a fixed term tenancy that did not end until December 31, 2012 and thereafter proceeded as a month to month tenancy. Rent for this unit was \$1,400.00 per month plus 50 percent of utilities. Rent was due on the first of each month. Utilities for the entire house were in the tenant's name. As and when utility bills came in, the tenant deducted the landlord's share of utilities from her rent. The tenant paid a security deposit of \$700.00 and a pet deposit of \$700.00 on November 11, 2011.

The landlord testified the tenant was served with a One Month Notice to End Tenancy for Cause on August 29, 2015 and a 10 Day Notice to End Tenancy for unpaid rent on September 03, 2015. The parties reached a mutual agreement to end the tenancy on September 24, 2015. This agreement had an effective date of October 31, 2015 and the tenant vacated the unit on that date.

The landlord testified that the tenant did not pay rent for October, 2015 and asked the landlord to keep the security and pet deposits to cover the rent. The landlord testified that she informed the tenant she could not do so and the deposits had to remain in trust until the end of the tenancy. The landlord therefore seeks to recover the unpaid rent of \$1,400.00.

The landlord testified that the tenancy agreement states that the utility bills are divided on a 50 percent split between the tenant and the landlord. The utility bills became much higher than normal and the landlord observed on two occasions when visiting the rental unit that the

tenant's washer and dryer were on for hours in the day. The landlord testified that the unit was rented to the tenant and one other occupant yet the tenant allowed other occupants to live in the unit. There were only two tenants living downstairs. The tenant was consuming too much electricity.

The landlord's agent KV testified that he moved into one of the lower units. The normal hydro bill for December to February would be around \$350.00 yet this bill for 2014/15 was \$782.32. KV testified that he could hear the tenant using the washer and dryer continually and saw the tenant deliver clothes to an older man in the yard once a week. KV asked the tenant if she was doing laundry for someone else and she denied it. The tenant also left lights on in a bedroom all night. This extra use caused the breaker in KV's unit to turn off as it could not handle the extra voltage.

KV testified that on March 03, 2015 he was in the tenant's unit repairing her fridge he smelt a strong smell of marijuana. KV testified he spoke to the tenant about it and she denied it and told KV to leave her unit. KV testified that he filed a police report about his mail being held back, damaged and opened and the suspicion of marijuana. KV testified that on March 06, 2015 he witnessed a grow op being taken down and saw the dirt and plants dumped over the balcony.

KV testified that he also saw the tenant's windows open and two fans were running airing out the smell of marijuana. KV spoke to the tenant and was told she was airing out the unit because her daughter was coming to stay. KV testified that in February, 2015 there was another grow op in a downstairs unit which he dealt with. KV testified that with the grow op and continuous use of the washer and dryer contributed towards the increase in Hydro bills. KV referred to the hydro bills provided in evidence. These bills were scrutinized during the hearing. KV testified that the bill for the period between December 29, 2014 and February 26, 2015 was for \$782.32, the bill between February 27, 2015 and April 30, 2015 was for \$470.59 and the bill between April 30, 2015 and June 29, 2015 was for \$407.80. KV testified that the previous year the bill for the period between February 26, 2014 and April 29, 2014 was for \$305.64. KV testified that this shows a huge spike in the electricity used.

The landlord testified that she seeks to recover \$1100.00 from the tenant for the over use of the utilities. The landlord testified that the tenant made the following deductions from her rent for utilities in 2015:

May, the tenant deducted \$457.00;

June, the tenant deducted \$366.00

July, the tenant deducted \$366.00

August, the tenant deducted \$267.00

September, the tenant deducted \$206.00.

The landlord agreed that hydro bills for these periods have not been provided in evidence.

The landlord seeks to recover an amount of \$3,100.00 in rent for a person living at the tenant's unit from February, 2015 to August, 2015. This person was not on the lease and should have to pay rent

The tenant agreed at the hearing that the landlord may retain the security deposit or \$700.00 and the pet deposit of \$700.00 to cover the unpaid rent for October, 2015.

The tenant disputed that there was another occupant living in her unit from February to August, 2015. The tenant testified that her daughter came to stay for a while in the summer when she was out of school but her daughter was in school between February and June in Victoria. The landlord cannot charge a tenant extra rent when her daughter comes to visit.

The tenant disputed the landlord's claim for utilities. The tenant testified that she has never had a grow op in her unit and has never tossed dirt or plants over the balcony. KV was never in the tenant's unit looking at the fridge in March, 2015. KV came to look at the fridge in July, 2015 and did not mention anything else to the tenant. The tenant testified that she did have a lot of plants and flowers from the garden in her unit but absolutely no marijuana plants. The tenant testified that she has not used fans to air her unit out.

The tenant disputed that she has ever done laundry for anyone else and only does her washing once or twice a week and generally hangs things up to dry. The tenant testified that her

daughter does not sleep with the lights on in her bedroom and they do not have another occupant living in the unit.

The tenant testified that with regard to the utilities the original arrangement she had with the landlord was for the utilities to be in the tenant's name for the entire building. The tenant was then to collect \$50.00 per month from each of the downstairs tenants. The amount of tenants varied but there were usually four tenants. The tenant testified that for a year and a half she deducted \$200.00 each month for utilities from her rent in agreement with the landlord.

The tenant testified that in June she sent the landlord an email stating that the utilities were unusually high and asked the landlord to go to Fortas to find out what the problem was. From June 2015 the tenant then proposed to the landlord that as there were now five tenants living downstairs and only the tenant and her daughter who lived there part time; that the tenant should only pay a third of the utilities. The landlord agreed to this arrangement and rent deducted for the bills from June and July reflect this. This also included the gas and water bills. In May, 2015 the landlord says the bill was \$943.00; the tenant testified that she forgot to take her utilities off the months before so her deductions reflected March and Mays bills. It was then up to the landlord to retrieve the bill payments from her other tenants and this should not be the responsibility of the tenant.

The tenant testified that she did not see the grow op downstairs but was informed on May 11, 2015 that it had been dismantled. That person was another tenant of the landlord and had nothing to do with the tenant or her unit.

KV asked the tenant if she emailed the landlord to say she wanted to charge the downstairs tenants \$89.00 a month for utilities. The tenant responded that she did ask the landlord to charge the downstairs tenants \$89.00 a month as the tenant had documented the cost for the utilities and raised issues with the landlord about the higher cost of utilities, wanting the landlord to explore this with Fortis. KV asked the tenant if she was friends with the downstairs tenant who had the grow op and who smoked weed every day. The tenant responded that she did know this tenant as she paid him to mow the lawns but he was not a friend although the tenant was aware he smoked pot.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim to recover unpaid rent for October, 2015; the tenant has agreed at this hearing that the landlord may retain the security and pet deposit of \$1,400.00 for the unpaid rent; I therefore find the landlord may retain these deposits to cover the unpaid rent pursuant to s. 38(4)9b) of the *Act*.

With regard to the landlord's claim for an increase in the cost of utilities; in this matter the landlord has the burden of proof to show the tenant had a grow op in her unit, that she used her washer and dryer excessively doing washing for other people, that she left lights on or that she had additionally occupants. The landlord must also show that the hydro bills were excessively more than previous years.

It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further corroborating evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

With this in mind I am not satisfied from the evidence presented that the tenant had a grow op in her unit, or that she used her washer and dryer excessively. There is nothing in the tenancy agreement that restricts the tenant's usage of her washer and dryer and the landlord has insufficient corroborating evidence to show the tenant did laundry for other people outside her unit. The landlord has insufficient evidence to show the tenant left lights burning at night or that this would cause a large spike in electricity usage. Furthermore, there is nothing in the tenancy agreement to show that the tenant must pay extra rent if her other daughter comes to visit and the tenancy agreement states that the number of occupants must not exceed three. The electricity is on one meter for all the units and without corroborating evidence to show that this tenant is solely responsible for any increase in power usage, I find the landlord has not met the burden of proof and her claim is dismissed.

### Conclusion

I Order the landlord to keep the security and pet deposit in satisfaction of Octobers rent.

As the landlord's claim does have some merit regarding the unpaid rent for October I find the landlord is entitled to recover the filing fee of \$50.00. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

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: November 18, 2015

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Residential Tenancy Branch

