



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. The landlord applied for an Order of Possession for unpaid rent and utilities and a Monetary Order for unpaid rent; unpaid utilities; estimated cleaning and repair costs; and, authorization to retain the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

At the outset of the hearing the parties indicated a willingness to resolve their dispute with respect to ending of the tenancy by mutual agreement. A mutually agreeable end of tenancy date was facilitated and I have recorded the agreement by way of this decision and the Order of Possession that accompanies the decision.

Included in the landlord's monetary claim were estimates to clean and repair the rental unit. Since the tenancy remains in effect until March 31, 2016 I found these claims to be pre-mature and they are dismissed with leave to reapply. The parties were reminded of the tenant's obligation to leave the rental unit "reasonably clean" and undamaged as required under the Act.

The balance of the landlord's monetary claims pertained to unpaid rent and utilities. I heard that there was no rent outstanding as of the date of this hearing. Rather, the only amount outstanding at this point in time was a hydro bill issued on January 18, 2016. The landlord also sought to include an estimate for utilities up to and including March 31, 2016 since the tenant will have occupancy of the rental unit until that date. The

tenant was agreeable to the estimating the utilities until the end of March 2016 and I amended the landlord's application accordingly.

Given that the majority of the landlord's monetary claims have since been paid or dismissed with leave, and the tenancy is still in effect at this time, the landlord requested that the security deposit and pet damage deposit remain in trust for the tenant to be administered in accordance with the Act. Since the deposits remain in trust for the tenant I found this request non-prejudicial to the tenant and I amended the landlord's application accordingly.

#### Issue(s) to be Decided

1. What is the mutual agreement with respect to ending this tenancy?
2. What is the amount of utilities the landlord is entitled to receive from the tenant?

#### Background and Evidence

Both applications concern the tenant's failure to pay rent when due on January 1, 2016 and the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on January 19, 2016. The tenant filed to dispute the Notice on January 21, 2016 and then paid the outstanding rent on February 1, 2016, which the landlord accepted for use and occupancy only, and paid the outstanding utilities on February 3, 2016. I also heard that the tenant presented payment of rent to the landlord for the months of February and March 2016. Nevertheless, during the hearing the parties reached a mutual agreement that:

1. The tenancy will end at 1:00 p.m. on March 31, 2016 at which time the tenant will return vacant possession of the rental unit to the landlord.

As to the landlord's monetary claim for utilities, I was provided undisputed evidence that the tenant provided the landlord with a post-dated cheque for March 16, 2016 in the amount of \$267.54. This cheque is intended to satisfy the tenant's portion (50%) of the hydro bill issued on January 18, 2016. Since this cheque is post-dated and there has been a history of dishonoured cheques, the landlord seeks a Monetary Order to ensure this amount is recovered from the tenant. The landlord confirmed that should the payment clear, the landlord will only enforce the unpaid balance against the tenant.

Given the parties' agreement to end the tenancy March 31, 2016 the landlord also sought to include estimated hydro costs in the Monetary Order. Based on previous

hydro bills, the landlord estimated that the tenant's share of the hydro bill expected on or about March 18, 2016 will be \$225.00. During the hearing, it was estimated that for the stub period of March 19 – 31, 2016 the tenant's portion of the hydro will be a further \$45.00. The tenant was agreeable to the amounts estimated and did not object to the inclusion of these amounts in the Monetary Order.

The tenant's raised a concern with respect to her access to the laundry facilities. The tenant indicated she was uncertain as to whether her access has been terminated. The landlord explained that the property includes two units that share a common laundry room. The landlord had been exploring the idea of installing separate hydro meters at the property and requiring the tenants to set up their own hydro accounts but due to the expense of installing separate meters the idea was dropped. The landlord confirmed that the tenant remains entitled to use the common laundry facilities and that the lock to the laundry room has not been changed.

### Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a mutual agreement during the hearing and to record the agreement in the form of a decision or order. I have accepted and recorded the mutual agreement reached by the parties during this hearing. Based on that agreement, I order the tenancy to end effective at 1:00 p.m. on March 31, 2016. With this decision I provide the landlord an Order of Possession that is effective at 1:00 p.m. on March 31, 2016 to serve and enforce as necessary.

Upon review of the tenancy agreement and the January 18, 2016 hydro bill provided as evidence, and considering the landlord has a post-dated cheque from the tenant for electricity costs in the amount of \$267.54, I find the landlord entitled to receive \$267.54 from the tenant for electricity consumed up to and including January 14, 2016. Since the tenant's cheque for this amount is not yet negotiable I provide the landlord with a Monetary Order for this amount. I further award the landlord hydro costs for the period of January 15, 2016 through to March 31, 2016, as estimated, in the sum of \$270.00 based upon the parties' mutual agreement to estimate the cost and include it in the Monetary Order. Should the tenant's post-dated cheque be negotiated the landlord may enforce the unsatisfied portion of the Monetary Order.

Pursuant to section 72 of the Act, I further award the landlord recovery of the \$100.00 filing fee she paid for her Application as this proceeding originated due to the tenant's

failure to pay rent when due or within five days of receiving the 10 Day Notice to End Tenancy.

In light of the above, the landlord is provided a Monetary Order in the total sum of \$637.54 [calculated as: \$267.54 for hydro to January 14, 2016 + \$270.00 for estimated hydro to March 31, 2016 + \$100.00 for the landlord's filing fee]. To enforce the Monetary Order it must be served upon the tenant and any outstanding balance may be enforced in Provincial court (Small Claims) as an Order of the court.

At this time the security deposit and pet damage deposit of \$300.00 each remain in trust to be administered in accordance with the Act.

### Conclusion

The parties reached a mutual agreement to end the tenancy effective at 1:00 p.m. on March 31, 2016. The landlord has been provided Order of Possession to ensure vacant possession is returned by that time.

The landlord has been provided a Monetary Order in the sum of \$637.54. This sum reflects the tenant's share of hydro, as estimated and agreed upon, up to and including March 31, 2016; plus, an award for recovery of the \$100.00 filing fee paid by the landlord.

The landlord's monetary claims for damage and cleaning costs were found to be premature and dismissed with leave to reapply.

The security deposit and pet damage deposit remain in trust at this time, to be administered in accordance with the Act.

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: March 09, 2016

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Residential Tenancy Branch