



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPR, CNR, MNR, MNSD, OLC, ERP, RP, PSF, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, unpaid utilities and the filing fee. The landlord also applied to retain the security deposit.

The tenant applied for an order to cancel the notice to end tenancy and for an order directing the landlord to comply with the *Act*, carry out emergency repairs and provide services. The tenant also applied for the return of the deposit and for the recovery of the filing fee.

The landlord served the tenant with a notice of hearing March 13, 2016, by registered mail to the rental unit. The landlord filed a copy of the tracking slip. Despite having made application for dispute resolution and having been served with the notice of hearing by the landlord, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Since the tenant did not attend the hearing, the tenant's application is dismissed without leave to reapply. Accordingly this hearing only dealt with the landlord's application

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The tenancy started on January 01, 2016 for a fixed term of one year. The rental unit is located on the upper level of the home. The landlord occupies the lower level.

The landlord filed a copy of the tenancy agreement into evidence. The rent is \$1,300.00 per month due on the first day of each month and does not include utilities. Prior to moving in, the tenant paid a security deposit of \$650.00.

The landlord testified that the tenant complained that the thermostat was not functioning properly and refused to pay the utility bills. The landlord had the furnace serviced and filed a copy of the invoice. The landlord stated that the furnace was in good working order.

The landlord notified the tenant in writing on January 31, 2016 that she owed for the cost of utilities. The tenant stated that since there was no heat, she was not going to pay. On March 02, 2016, the landlord served the tenant with a notice to end tenancy for \$38.82 in unpaid utilities. The tenant disputed the notice in a timely manner.

The landlord stated that on April 07, 2016, he observed a moving truck outside the rental unit. On April 12, 2016, he received a text message from the tenant that informed him that she had moved out and would return the keys to the landlord if he returned the security deposit.

The landlord stated that shortly before this hearing, he looked through the window of the rental unit and observed some of the tenant's belongings still inside the rental unit. The landlord requested that he be granted an order of possession.

The landlord testified that the tenant did not pay rent for April 2016 and is claiming \$1,300.00 towards unpaid rent. The landlord has also filed copies of utility bills owed by the tenant in the total amount of \$148.20.

### **Analysis**

The tenant received the notice to end tenancy for unpaid utilities on March 02, 2016 and did not pay within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to \$1,300.00 for unpaid rent and \$148.20 for unpaid utilities. Since the landlord has proven his case, he is entitled to the recovery of the filing fee of \$100.

Overall the landlord has established a claim of \$1,548.20. . I order that the landlord retain the security deposit of \$650.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$898.20. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order of possession effective **two days after service** on the tenant. I also grant the landlord a monetary order in the amount of **\$898.20**

The tenant's application is dismissed in its entirety.

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: April 15, 2016

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Residential Tenancy Branch