



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

## Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided limited documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

## Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

## Background and Evidence

The parties agreed that this month to month tenancy started on May 01, 2015. Rent for this unit was \$1,300.00 per month due on the 1<sup>st</sup> of each month. The landlord testified that the tenant agreed to a rent increase of \$200.00 on May 01, 2016, the tenant disputed that he did not agree to a rent increase and that rent remains at \$1,300.00.

The landlord testified that the tenant failed to pay all the rent due since February, 2016 and owes \$600.00 for February, \$600.00 for March, and \$200.00 for April. No rent has been paid for May or June. The total amount of unpaid rent the landlord has calculated is \$4,400.00. The landlord requested an amendment of his application to include the unpaid rent for June, 2016.

The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on May 02, 2016. This was served in person to the tenant. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on May 11, 2016. The tenant did not pay the outstanding rent or file an application to dispute the Notice.

The landlord testified that the tenant also failed to pay his share of the utilities. The other tenant receives the utility bills and pays a 40 percent share and this tenant must pay 60 percent of the utilities. The landlord testified that currently the tenant owes \$1,000.00 for utilities. The landlord agreed he has not provided copies of the utility bills to the tenant or a written demand for payment within 30 days. The landlord has not provided copies of the utility bills in documentary evidence.

The landlord seeks a Monetary Order to recover the unpaid rent, utilities and the filing fee of \$100.00 and seeks an Order of Possession effective as soon as possible.

The tenant disputed the landlord's claim to recover unpaid rent for February, March and April and testified that he has paid more than the amounts the landlord has stated. The tenant testified that he paid rent in cash and did not get a receipt from the landlord. The tenant agreed he has withheld his rent for May and June but it should only be \$1,300.00 not the \$1,500.00 claimed by the landlord.

The tenant testified that he has had the same amount of hydro bills each month and was paying around \$300.00. The neighboring tenant must now be growing marijuana as the bills have spiked to \$500.00 and \$1,100.00 a month. The tenant testified that he

does not have laundry facilities and only has a wood burning stove and had has had no hot water for a month so the hydro bills should not be this high.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

When a tenant claims to have paid rent or more rent then the landlord has testified to then the tenant has the burden of proof and must provide corroborating evidence to show how much rent was paid for the months in question. The tenant has insufficient corroborating evidence to support his claim that he does not owe rent for February, March and April, 2016 and the tenant does not dispute that he did not pay rent for May and June. I am not prepared to allow the landlord's claim for a rent increase of \$200.00 for May and June and refer the landlord to s. 41, 42 and 43 of the *Act* regarding rent increases. The legal rent increase for 2016 is 2.9 percent and unless the landlord has something in writing from the tenant to corroborate the landlord's claim that the tenant agreed to a \$200.00 rent increase then I find the rent remains at \$1,300.00.

Consequently, I am satisfied from the evidence before me that there is outstanding rent for February, March, April, May and June of \$4,000.00 and the landlord will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover \$1,000.00 for unpaid utilities; the landlord is required to provide a tenant with a copy of any utility bills and a written demand for payment within 30 days pursuant to s. 46(6) of the *Act*. If the tenant then fails to pay his share of any utilities then the landlord may treat it as unpaid rent and file an application

to recover the amounts unpaid. As the landlord has failed to do so I must dismiss the landlord's application to recover unpaid utilities with leave to reapply.

I do however, caution the landlord to investigate the possible cause of any spike in the hydro bills and to deal with any increases appropriately.

As the landlord's claim has merit, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing of **\$4,100.00**:

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,100.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective **two days** after service upon the tenant. This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced 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: June 24, 2016

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Residential Tenancy Branch