



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, OPR, MNR, FF; CNL, DRI, LRE, MNDC, MNR, MNSD, OLC, PSF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for landlord use pursuant to section 55;
- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing also addressed the tenants' cross application for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Tenant TA and tenant DS (collectively the "tenants") and landlords along with the landlords' interpreters (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants confirmed receipt of the landlord's application for

dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were served with the landlords' application.

#### Preliminary Issue – Service of Application

Tenant TA testified that the landlord refused personal service of the tenants' application for dispute resolution hearing package ("Application") on August 12, 2016. Tenant DS testified that approximately three days later she attended the landlords' residence to serve the Application at which time the landlord took a picture of the hearing notice but again refused service. Tenant DS testified that she maintains possession of the Application as a copy was not left with the landlord either date.

The landlord testified that an individual attempted to serve her on August 12, 2016, however this individual was neither of the listed tenants. The landlord explained that she refused service of these documents because she did not know what they pertained to. The landlord does not dispute that approximately three days later tenant DS attended her residence with the Application. However the landlord contends that tenant DS only showed the Application to the landlord and that tenant DS maintained possession of it. The landlord testified that tenant DS would not provide the landlord with a copy; consequently the landlord took a picture of the hearing notice only.

Section 89 of the *Act* establishes that a tenant may personally serve the landlord an Application and *Residential Tenancy Policy Guideline*, "12. Service Provisions" clarifies that a tenant must physically hand a copy of the application to the landlord. In the event the landlord declines to accept the Application, it may be left near the landlord provided the landlord is informed of the nature of the Application.

I find that the tenants attempted to personally serve the Application in accordance with section 89 of the *Act*, and the landlord refused service. I find the tenants did not leave a copy of the Application with or near the landlord on either service attempt. I further find that the tenants did not attempt to serve the Application by any other approved means. For these reasons I find the landlord was not served and dismiss the tenants' Application without leave to reapply.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession for landlord use or unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords authorized to recover the filing fee for this application from the tenants?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on March 1, 2016 on a month-to-month basis. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$500.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

On July 30, 2016 the landlords issued the 2 Month Notice, indicating that the rental unit will be occupied by the landlord or the landlords' close family member. The notice indicates an effective move-out date of October 1, 2016. The landlord testified that her mother and nephew will move into the rental unit once the tenants vacate.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") for unpaid rent of \$667.00 plus \$75.00 and \$65.71 in utilities due on August 1, 2016 was issued to the tenants on August 6, 2016 by way of posting to the rental unit door where the tenants reside. The notice indicates an effective move-out-date of August 13, 2016.

### *Landlord*

The landlords seek a monetary order of \$807.71 for unpaid rent from July 2016 to August 2016 and utilities in the amount of \$65.71. The landlords claimed that the tenants paid a total of \$1,258.00 in rent for the above two months.

The landlords are also seeking to recover the \$100.00 filing fee for this application from the tenants.

### *Tenants Reply*

The tenants testified that the landlords have historically issued 2 Month Notices in bad faith to other tenants in the past. Further the landlord initially told the tenants it was her nephew moving in and has recently told the tenants it was her mother moving in.

In relation to the 10 Day Notice, tenant TA testified that neither July nor August rent was paid in full. Tenant TA testified that a room-mate failed to pay her full portion for July rent and tenant TA personally withheld \$500.00 from August rent. Tenant TA testified

that she withheld August rent because the landlord did not reimburse her for labour conducted on the rental unit as previously agreed to.

Tenant TA testified that as per the tenancy agreement they were responsible for 70% of the utilities. Tenant TA was not confident that the landlord was only charging 70% of the utility costs and therefore did not pay August utilities.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent and utilities tenants may, within five days, pay the overdue rent and utilities or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Although the tenants' application has been dismissed due to service issues, the tenants did file an application in an attempt to explain the reasoning behind the non-payment of rent and utilities. At no time did the tenants argue that rent and utilities have been paid in full. Section 26 of the *Act* requires tenants to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*. Despite any work arrangement agreement, the tenants were obligated to pay rent in full for August and failed to do so.

Based on the landlords' testimony and the notice before me, I find that the tenants were served with an effective notice. Accordingly I find that the landlords are entitled to a two (2) Day Order of Possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlords proved that the current rent for this unit is \$1,000.00. I find the landlords provided undisputed evidence that the tenants failed to pay full rent from July 2016 to August 2016. Therefore, I find that the landlords are entitled to \$742.00 in rent.

The landlords have submitted two utility bills, neither of which were due by August 1, 2016 or when calculated at 70% totalled \$65.71. In fact one utility bill indicates the previous bill, which would have been August 2016 totalled \$65.71. Based on this utility bill I find the landlords have attempted to recover 100% of August 2016 utility costs

rather than the 70% as indicated in the tenancy agreement and therefore dismiss this portion of the landlords claim without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in the total amount of \$500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$242.00. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$342.00.

### Conclusion

I grant an order of possession to the landlords effective **two (2) days after service on the tenants**.

I dismiss the landlords' application for a monetary order in relation to utilities without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$342.00.

I dismiss the tenants' entire application without leave to reapply.

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: September 30, 2016

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Residential Tenancy Branch