



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, MNDC, MT, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to allow a tenant more time to make an application to cancel a Notice to End Tenancy, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on August 9, 2016, for a monetary order for money owed or compensation for damage or loss under the Act, and to have the landlord make emergency repairs for health and safety reasons.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

### Preliminary issue

The tenants have applied for more time to make an application to cancel a Notice to End Tenancy. However, I find the tenants' application was filed within the statutory time limited. Therefore, it is not necessary for me to consider this portion of their application.

### Issues to be Decided

Should the Notice be cancelled?  
Should the landlord be ordered to make emergency repairs?  
Are the tenants entitled to monetary compensation?

### Background and Evidence

The tenancy began on July 1, 2015. Rent in the amount of \$1,350.00 was payable on the first of each month. A security deposit of \$675.00 was paid by the tenants. The tenants were required to pay a pet damage deposit of \$337.50, which has not been paid.

### Notice to End Tenancy

The parties agreed that the tenants were served with the Notice. The Notice has been changed to indicate that the tenants have not paid the required pet damage deposit. The Notice also indicates that the tenants have not paid the required utilities in the amount of \$301.08.

The landlord testified that the tenants have not paid the required pet damage deposit.

The landlord testified that the tenants are responsible to pay all the utilities for the rental unit. The landlord stated that the tenants have not done so, even after they have been given a copy of the invoices.

The tenants testified that they agree they have not paid the pet damage deposit, the tenants stated "they just have not got around to paying it".

The tenants testified that the landlord wants them to pay for the water, septic and garbage. The tenants stated the septic is not listed in the tenancy agreement, and the garbage is included in the rent. The tenants deny that they have received a written demand from the landlord.

### Repairs

The tenants testified that the landlord has not made emergency repairs for health and safety reasons. The tenants stated that they were provided with two refrigerators at the start of the tenancy and one of those refrigerators is not working. The tenants stated the dishwasher has not been working since the tenancy commenced.

The landlord testified that they were told that the tenant's partner that the basement refrigerator was working. The landlord stated that the basement refrigerator should not be an issue as the tenants have another refrigerator upstairs.

The landlord stated that they are agreeable to look at the appliances on Monday October 3, 2016 at 12:00 noon to determine if the appliances need repairs.

In reply, the tenants agreed to the landlord attending on the above noted date.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The landlord seeks to end the tenancy for failure to pay the required pet damage deposit. While the tenants reason for not paying the deposit is unreasonable and likely would give cause to end the tenancy; however, the landlord did not give notice to end tenancy under section 47 of the Act.

Under section 52 of the Act, the notice must be in the proper form. Therefore, I find the Notice issued under section 46 of the Act, for the reason of failure to pay a pet damage deposit is not valid.

The landlord is at liberty to issue a new notice under section 47 of the Act. The landlord may use a copy of my decision at any future hearing to show the reason why the tenants have not paid the pet damage deposit.

In this case, the Notice was also issued for unpaid utilities; these utilities are water, sewer, and garbage. The evidence of the tenants was the garbage and sewer is included in the rent.

I have reviewed tenancy agreement; I accept the tenants' evidence that garbage is included in rent as that box is checked off in the tenancy agreement. I accept the landlord's evidence that the water and sewer are not included in the rent. The water box is not checked off as included in rent.

Although the tenancy agreement does not contain a box for sewer, as this is a preprinted form created by the Residential Tenancy Branch. I am satisfied by the following term listed under additional information on the tenancy agreement, which was initialled by the parties that other utilities were considered, as it would not be reason to write the following term otherwise.

"Tenant understands they are responsible for all utilities"

[Reproduced as written.]

Based on the above, I find the tenants are responsible to pay the water and sewer charges.

Under Section 46(6) (b) if the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under section 46 of the Act.

I am not satisfied that the tenants have received a written demand for payment as required by the Act, as the Notice indicates the written demand was given on August 9, 2016, which was the same day the Notice was issued. I find the 10 Day Notice to End Tenancy for Unpaid Utilities, was issued prematurely.

In light of the above, I find the Notice issue on August 9, 2016, is not valid and has no force or effect. Therefore, I grant the tenants' application to cancel the Notice. The tenancy will continue until legally ended in accordance with the Act.

The landlord is at liberty to give the tenants a written demand for payment of the utilities. Should that demand remain unpaid for more than 30 days the landlord is entitled to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

In this case, the tenants' application was seeking repairs. The parties agreed the landlord would attend on October 3, 2016, to inspect the dishwasher and the basement refrigerator. Should either appliance be found not to be operating properly, I Order the landlord to make the necessary repairs, as these items were included in the rent.

The tenants further seek compensation for the appliances not working. However, I find their application was premature. Should the appliance be found to be not working properly and the landlord does not make the required repairs the tenants' are at liberty to reapply.

### Conclusion

The tenants' application to cancel the Notice was granted. The landlord will inspect and if necessary make repairs to the appliances. The tenants' application for monetary compensation is dismissed with 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: October 6, 2016

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Residential Tenancy Branch

