



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPL, MNR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for landlord's use of property, a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. The landlord testified that the tenants were individually personally served with the Landlord Application for Dispute Resolution and notice of this hearing on November 1, 2016, however no one for the tenants attended the call. I accept the testimony of the landlord and I find that the tenants were served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the landlord advised that the tenants have vacated the rental unit and the landlord's application for an Order of Possession is withdrawn.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for unpaid utilities?
- Is the landlord entitled to recovery of the \$100.00 filing fee?

### Background and Evidence

The landlord testified that this month-to-month tenancy began in February, 2014 and the tenants moved out of the rental unit on or about November 30, 2016. Rent in the amount of \$1,200.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy, the parties agreed that the tenant would do some work for the landlord to pay the \$600.00 security deposit, which was done by the tenant. No pet damage deposit was collected and pets were not permitted in the rental unit according to the tenancy agreement.

The landlord further testified that the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. It is dated September 13, 2016 and contains an effective date of vacancy of December 1, 2016. The parties discussed the notice and agreed that the landlord would pay the outstanding utilities owed by the tenants

in lieu of compensation if the tenants moved out by the first of November, but they didn't move out until the end of November. The landlord claims the outstanding utilities totalling \$1,315.94, but has not provided copies of any utility bills, stating that the Residential Tenancy Branch would not allow the landlord to add a damage claim or further evidence on this existing application.

The tenants have not provided the landlord with a forwarding address.

### Analysis

It would be improper and contrary to the Residential Tenancy Branch Rules of Procedure to allow the landlord to provide evidentiary material after the hearing commenced, particularly where the tenants have not attended the hearing and have not had an opportunity to be heard on the issue of providing late evidence. It is not clear to me what the Residential Tenancy Branch personnel told the landlord, or what the landlord asked. However, I find it just in the circumstances to dismiss the landlord's application for a monetary order for unpaid utilities with leave to reapply.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

The landlord's application for a monetary order for unpaid utilities is hereby dismissed with leave to reapply. The landlord's application for recovery of the filing fee is hereby dismissed 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: December 15, 2016

---

Residential Tenancy Branch