



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, FF; CNR, RP

### Introduction

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

- an Order of Possession for unpaid utilities, pursuant to section 55; and
- a monetary order for unpaid utilities, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 8, 2018 ("10 Day Notice"), pursuant to section 47; and
- an order requiring the landlord to perform repairs to the rental unit, pursuant to section 33.

The landlord, the tenant and the tenant's advocate 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 tenant confirmed that her advocate had authority to speak on her behalf at this hearing. This hearing lasted approximately 80 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlord's 10 Day Notice on January 8, 2018, under her rental unit door. The landlord confirmed that he served the notice using the above method. Although leaving a copy of a notice under the door is not permitted by section 88 of the *Act*, I find that the tenant was sufficiently served as per section 71(2)(c) of the *Act* with the landlord's 10 Day Notice on January 8, 2018.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

The hearing began at 9:30 a.m. and ended at approximately 10:50 a.m. The landlord disconnected from the hearing, without warning, at 10:45 a.m. He did not return to the hearing before it concluded at 10:50 a.m. I continued the hearing in his absence during this five-minute period.

Most of the 80-minute hearing time was spent listening to the landlord make submissions. It was lengthened by the fact that the landlord continuously interrupted me, repeatedly debated and argued the same issues with me, and was rude and disrespectful. I repeatedly warned the landlord to stop his disruptive behaviour but he continued.

When I asked the landlord questions throughout the hearing, he became upset, indicating I was "biased" and favouring the tenant. When I notified him that I had to ask questions in order to make a determination about both parties' applications, he refused to answer my questions. When I asked for his response to the tenant's repair requests, he told me to do whatever I wanted because he was going to "appeal" my decision.

Throughout the hearing, the landlord stated that he would "appeal" whatever decision I made. I notified him that I had not yet made a final, binding decision during the teleconference. I informed him that I would make a final decision once the hearing was over and issue a written decision to both parties after the hearing.

I caution the landlord not to engage in the same rude, hostile, inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

Issue to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award for unpaid utilities?

Is the landlord entitled to recover the filing fee for his application?

Is the tenant entitled to an order requiring the landlord to perform repairs to the rental unit?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on November 1, 1999. Monthly rent in the amount of \$834.00 is payable on the first day of each month. A security deposit of \$330.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of \$963.24 plus the \$100.00 filing fee paid for his application. The landlord seeks \$963.24 for unpaid hydro electricity utilities ("utilities") for a four-month period. The landlord provided copies of three utility bills for the entire rental building from June to December 2017. He compared the three bills, took the average of two at \$388.40 (August 30 to October 30 total bill of \$434.73 and June 29 to August 29 total bill of \$340.08) as compared to the third from October 31 to December 29 (\$869.02 total). He subtracted the \$388.40 average of the two bills from the last bill of \$869.02 to reach a difference of \$481.62. He stated that the \$388.40 for a two-month period and a further two months until now resulted in \$963.24 that the tenant stole in electricity over a fourth-month period.

The landlord said that the tenant stole electricity from the landlord by using an electrical outlet to plug in a cord, in the common area hallway outside of the tenant's rental unit, in the rental building. The landlord did not provide the dates that the tenant used the outlet, the amount of time she used the outlet for, or the amount of electricity used with the corresponding cost.

The landlord stated that utilities are not included in the tenant's monthly rent due to the landlord and the tenant pays a separate amount for it to the hydro company directly. He claimed that the tenant's two utility bills, from September 29 to November 29, which she provided for this hearing, were too low and she was barely paying anything. He stated that this was justification for her using the landlord's electricity from the outlet so she owes the money to the landlord. The landlord provided a photograph of a cord plugged into an electrical outlet outside of a door. It was signed by four other tenants in the rental building. The landlord indicated \$869.02 in unpaid utilities due on January 3, 2018 in the 10 Day Notice issued to the tenant. He also provided letters demanding utilities payments from the tenant.

The tenant confirmed that she pays her own utilities, each month, to the hydro company directly, not the landlord. The two utility bills provided by the tenant for this hearing, include her name and the rental unit address on them. The tenant said that her hydro costs were low because she was out of the country from October 9 to December 10, 2017. She claimed that she also does not use a lot of heat in her rental unit generally.

The tenant stated that when she returned to the rental unit after December 10, 2017, her electricity had been disconnected so she slept in the cold. She said that she had her utility bills delivered to the caretaker of the building while she was out of town. She testified that a representative from the hydro company came to check whether the electricity was working at the rental unit and provided her with an extension cord that he plugged into the electrical outlet in the common area hallway outside the tenant's rental unit. She claimed that she informed the caretaker about this connection and he informed her it was acceptable to use the electrical outlet in the hallway for emergencies, such as boiling her kettle water. The tenant claimed that she used it only for this purpose for about five minutes per day for a one week period. She testified that the landlord, not the caretaker, told her to stop using the electrical outlet so she immediately stopped and has not used it since.

### Analysis

#### Order of Possession and 10 Day Notice

In accordance with section 46(4) of the *Act*, the tenant must file her application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on January 8, 2018 and filed her application to dispute it on January 11, 2018. Accordingly, I find that the tenant's application was filed within the five day time limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. For the below reasons, I find that the landlord did not meet his onus of proof.

I dismiss the landlord's claim for an order of possession based on the 10 Day Notice, without leave to reapply. I allow the tenant's application to cancel the 10 Day Notice and to continue the tenancy. I find that the tenant pays her own utilities to the hydro company directly, as it does not form part of her monthly rent due to the landlord. I find that the tenant does not owe any utilities to the landlord as part of her tenancy. Therefore, I find that the landlord's 10 Day Notice demanding payment for utilities of \$869.02, which I find the tenant is not required to pay to the landlord, to be invalid.

#### Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I dismiss the landlord's claim for a monetary order for \$963.24 in unpaid utilities, without leave to reapply. I find that the tenant did not steal electricity from the landlord by plugging her small kettle cord into the common area hallway electrical outlet outside her rental unit in the rental building. I accept the tenant's testimony that she had permission from the caretaker of the rental building, who is the landlord's agent, to plug her kettle into the outlet for a short temporary one-week period. I accept the tenant's evidence that she no longer uses this electrical outlet and stopped using it when the landlord informed her it was not acceptable.

I find that the tenant does not owe any money to the landlord for this brief utilities usage and I find that the landlord's attempt to charge the tenant utilities for the entire rental building to be unreasonable. I find that the tenant was not told by the caretaker, who gave this permission, to compensate the landlord for this temporary usage of utilities. Therefore, I find that the landlord is not entitled to compensation for utilities usage from the tenant.

As the landlord was wholly unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

#### Repair Orders

During the hearing, the tenant requested the following repairs to be done. The landlord claimed that the tenant was unclean and did not provide notice to the landlord about her repair requests. I find the landlord's evidence to be inaccurate since there were two previous RTB hearings where two different Arbitrators ordered the landlord to complete these very repairs and the landlord agreed with same. I also note that the landlord unexpectedly disconnected from the teleconference and did not call back in, during the tenant's testimony regarding the required repairs to her kitchen tap and kitchen fan.

Based on the previous hearing decisions made by different Arbitrators on November 25, 2010 and February 3, 2011, the file numbers of which appear on the front page of this decision, I find that repair orders have already been made by the Arbitrators and the landlord has failed to fulfill them. The tenant provided a copy of the above two previous decisions, with her application. Repair orders were issued by two different Arbitrators on November 25, 2010 and February 3, 2011, for the landlord to re-enamel the bathtub in the rental unit. The landlord only painted the bathtub as per his own testimony and the tenant's testimony. A repair or replacement order for the living room blinds was made by an Arbitrator in the decision from February 3, 2011, which I find the landlord has also failed to complete.

Since no future monetary consequences for the repair orders were implemented by the previous two Arbitrators, who both commented that the tenant could reapply for a rent reduction to do so, I have incorporated these below. I find that this is not *res judicata* because it was not previously decided and both decisions gave the tenant specific leave to reapply.

I order the landlord, at his own cost, to have window blinds installed in proper, working order at the patio, kitchen and bedroom windows in the rental unit by April 15, 2018. If the landlord fails to do so, I order the tenant to reduce her monthly rent by \$50.00, beginning on the following month after the violation occurs, until the installation and/or the proper, working order occurs. If the parties disagree as to whether the blinds are in proper, working order, they have leave to reapply at the RTB for determination.

I order the landlord, at his own cost, to have certified, licensed professional(s) inspect the kitchen tap and the kitchen fan in the rental unit to ensure they are both in proper, working order by April 15, 2018. If the professional(s) recommend repair of the kitchen tap and/or the kitchen fan, I order the landlord, at his own cost, to have the repair(s) done to proper, working order by the certified, licensed professional(s) by April 30, 2018. If the landlord fails to do so, I order the tenant to reduce her monthly rent by \$50.00 for the kitchen tap and \$50.00 for the kitchen fan, beginning on the following month after the violation(s) occur, until the inspection and/or the repair to proper, working order occurs. If the parties disagree as to whether the kitchen tap and/or the kitchen fan are in proper, working order, they have leave to reapply at the RTB for determination.

I order the landlord, at his own cost, to have a certified, licensed professional re-enamel the bathtub in the rental unit and to ensure the bathtub is in proper, working order by April 15, 2018. If the landlord fails to do so, I order the tenant to reduce her monthly rent by \$100.00, beginning on the following month after the violation occurs, until the re-enamel occurs and/or the proper working, order occurs. If the parties disagree as to whether the re-enamel has been adequately completed and/or the bathtub is in proper, working order, they have leave to reapply at the RTB for determination.

I order the landlord, at his own cost, to have a certified, licensed professional inspect the bathtub in the rental unit, to determine whether replacement of tiles is required, by April 15, 2018. If the professional recommends a replacement of tiles in the bathtub, I order the landlord, at his own cost, to replace the tiles to proper, working order by the certified, licensed professional by April 30, 2018. If the landlord fails to do the above, I order the tenant to reduce her monthly rent by \$50.00, beginning on the following month after the violation occurs, until the inspection and/or the replacement of tiles to proper, working order occurs. If the parties disagree as to whether the replacement of tiles is in proper, working order, they have leave to reapply at the RTB for determination.

### Conclusion

The landlord's entire application is dismissed without leave to reapply.

The tenant's application to cancel the landlord's 10 Day Notice is allowed. The landlord's 10 Day Notice, dated January 8, 2018, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to perform the above inspections and repairs by the above deadlines. I order the tenant to reduce her rent by the above amounts if the landlord fails to comply as noted above.

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: March 14, 2018

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Residential Tenancy Branch