



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR (Tenants)  
    OPU, MNRL, FFL (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application May 8, 2018 (the “Tenants’ Application”). The Tenants disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2018 (the “Notice”).

The Landlord filed his application May 9, 2018 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on the Notice. The Landlord also sought to recover monies owed for unpaid rent and utilities and reimbursement for the filing fee. At the hearing, the Landlord asked to keep the security deposit.

Tenant A.B. (the “Tenant”) appeared at the hearing and appeared for Tenant K.H. The Landlord appeared at the hearing. I explained the hearing process to the parties and neither had questions when asked. Both parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Tenant testified Tenant K.H. left the hearing package and evidence for the Tenants’ Application at the Landlord’s residence. The Landlord testified he never received the hearing package or evidence. The Tenant did not provide any further evidence to support her position.

The Landlord objected to me hearing the Tenants’ Application. I explained to the Landlord what the Tenants’ Application was for and read out the application description. I told the Landlord the Tenants’ Application raises the same issues that the Landlord’s Application does. I told the Landlord I could not see how me hearing the Tenants’ Application prejudiced him in the circumstances. I told the Landlord I would proceed with the Tenants’ Application.

I did however exclude the Tenants' evidence. Rule 3.14 of the Rules of Procedure (the "Rules") requires an applicant to serve their evidence on a respondent. Rule 3.17 of the Rules allows me to admit evidence not served in accordance with the *Residential Tenancy Act* (the "Act") or Rules if doing so would not prejudice the other party. In my view, the party who has the obligation to serve evidence has the onus to prove it was served in accordance with the Act and Rules. Here, the Tenant did not satisfy me that the evidence was served on the Landlord in accordance with the Act and Rules. I excluded the Tenants' evidence as admitting it would have prejudiced the Landlord given it was evidence he testified he had not received. I told the Tenant she could still provide evidence and submissions regarding the contents of the excluded evidence.

The Landlord testified he served the hearing package and evidence on Tenant K.H. He had submitted a witnessed Proof of Service in this regard. The Tenant said she was aware of the Landlord's Application and had received his evidence. The Tenant confirmed she had time to prepare for the hearing.

I noted at the outset that the Tenants' Application and Landlord's Application provide different addresses for the rental unit. I confirmed with the Landlord the address he wanted on an Order of Possession if one was issued and this is the address that is included on the front page of this decision.

Both parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

I note that the phone connection with the Tenant was very poor such that I had a very difficult time hearing and understanding what she was saying. I told the Tenant this several times throughout the hearing.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Landlord entitled to a Monetary Order for unpaid rent and/or utilities?

#### Background and Evidence

The Landlord had submitted a written tenancy agreement as evidence. Both parties agreed it is accurate. It is between the Landlord and Tenants. It includes the child of Tenant A.B. who is a minor and therefore not included in the applications or style of cause. The tenancy started

October 1, 2017 and is a month-to-month tenancy. Rent is \$1,350.00 per month due on the first of each month. Both parties agreed a security deposit of \$650.00 was paid prior to the Tenants moving into the unit. The agreement is signed by the Landlord and Tenant K.H. The Tenant did not sign the agreement; however, both parties confirmed there is an oral agreement between the Tenant and the Landlord in the same terms as the written agreement.

The Notice states the Tenants failed to pay \$1,350.00 rent due May 1, 2018 and \$217.61 utilities due December 7, 2017.

During the hearing, I asked about the postal code included on the Notice as it is different than on the tenancy agreement. Neither party had clear evidence on the correct postal code. I confirmed with the Tenant that she understood the Notice related to the rental unit. I did not amend the postal code on the Notice given the lack of clarity on what the correct postal code is.

The Landlord testified he served the Notice on a male at the rental unit on May 2, 2018. The Landlord had submitted a witnessed Proof of Service in this regard. The Tenant testified she received the Notice May 2, 2018 from the male.

Based on my records, I asked the Tenant if she disputed the Notice May 8, 2018 and she said she did. Upon a further review of the paper version of the Tenants' Application, it appears the Tenants may have filed the application May 7, 2018.

The Landlord testified \$1,350.00 rent was due May 1, 2018 for May rent and this is what is reflected on the Notice. The Tenant did not take issue with this. Both parties agreed the Tenants did not pay anything since the Notice was issued. Both parties agreed there is currently \$2,700.00 in rent outstanding. The Landlord asked to amend his application to reflect the current amount outstanding.

The Landlord testified that the Tenants failed to pay a hydro bill in the amount of \$217.61 for the period October to December of 2017. The Landlord had not submitted this bill. The Landlord said he did not provide the Tenants with a written demand for payment of the utilities. The Tenant said the Tenants paid this bill. Neither party provided further evidence to support their position.

The Tenant said the Tenants had authority under the *Act* to withhold rent. She testified the Landlord comes uninvited into the rental unit. She said the Landlord has assaulted the Tenants. She testified about two incidents when the Landlord said he provided 24-hour notices to enter the rental unit but she never received the notices. The Landlord and the police did a walk through of the unit but found nothing. She said another walk through was subsequently done. She said the Landlord video tapes her friends. She said there is mould downstairs in the unit. She testified that she told the Landlord a door to the unit had been kicked in and he did not fix it. She testified the Tenants had to buy a \$12.00 piece of wood to fix the door. She said Tenant K.H. asked the Landlord to reimburse the Tenants for this. I asked if the Tenants provided the

Landlord with a written account and a receipt for this piece of wood and she said Tenant K.H. sent an email to the Landlord.

The Landlord said the Tenants did not provide him with a written account and a receipt for the \$12.00 piece of wood.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where tenants have failed to pay rent or utilities. The relevant portions of section 46 state:

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.
- (6) If
- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
  - (b) 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 this section.

Based on the testimony of both parties, and the written tenancy agreement, I find the Tenants were obligated to pay \$1,350.00 by May 1, 2018 for May rent unless they had a right to withhold rent under the *Act*.

The Tenant provided several reasons for the Tenants not paying rent. The *Act* sets out specific circumstances in which tenants are entitled to withhold rent in sections 19(2), 33(7), 43(5), 51(1.1) and 65(1). In relation to the kicked-in door, I accept the testimony of the Landlord that the Tenants did not provide him with a written account and receipt for the \$12.00 piece of wood. I did not find the Tenant's evidence on this point compelling as she simply said Tenant K.H. sent an email to the Landlord without providing any detail about the email. Therefore, I find the Tenants were not entitled to withhold rent under the emergency repair provisions in section 33 of the *Act*. None of the other reasons for not paying rent provided by the Tenant amount to grounds to withhold rent under the *Act*. I find the Tenants were required to pay rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the testimony of both parties, I find the Tenants have not paid any of the outstanding rent since May and therefore owe \$2,700.00 in outstanding rent for May and June. Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

Based on the testimony of the Tenant, I find she received the Notice May 2, 2018.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the Notice on May 2, 2018 to pay or dispute it under section 46(4) of the *Act*. Based on the testimony of both parties, I find the Tenants did not pay any of the outstanding rent. The Tenant testified the Tenants disputed the Notice May 8, 2018. The paper version of the Tenants' Application appears to indicate the Tenants disputed the Notice May 7, 2018. I do not find it necessary to determine which date the Tenants disputed the Notice as the outcome is the same whether the Tenants' Application was filed May 7 or 8, 2018. As stated above, the Tenant provided no lawful basis for withholding rent and therefore the Notice is upheld and the Tenants' Application is dismissed without leave to re-apply.

I note that the Landlord has the onus to prove the Notice both in relation to the Tenant's Application and Landlord's Application. Based on my findings above, the Landlord has proved the Notice.

I acknowledge the Notice includes unpaid utilities of \$217.61 due December 7, 2017. Based on the testimony of the Landlord, I find he did not provide the Tenants with a written demand for payment of the utilities and therefore was not entitled to issue the Notice based on unpaid utilities under section 46(6) of the *Act*.

Given I have dismissed the Tenant's Application, and found the Notice complies with section 52 of the *Act*, I grant the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. The Order is effective two days after service on the Tenants.

Based on the testimony of both parties, I find the Tenants currently owe \$2,700.00 in outstanding rent and I amend the Landlord's Application to reflect this pursuant to rule 4.2 of the Rules.

I am not satisfied the Tenants owe the Landlord \$217.61 for utilities. The parties gave conflicting evidence about this and neither provided evidence to support their position. The Landlord has the onus to prove the utilities are owed and outstanding as it is his application for monetary compensation. The Landlord has failed to satisfy me that \$217.61 in utilities is outstanding and I dismiss this aspect of the Landlord's Application without leave to re-apply.

Given the above, I find the Landlord is entitled to monetary compensation in the amount of \$2,700.00 for unpaid rent.

Given the Landlord was successful in this application, I award reimbursement of the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

I find the Landlord is entitled to monetary compensation in the amount of \$2,800.00. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to keep the \$650.00 security deposit to offset the monies owed. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,150.00.

### Conclusion

The Tenants' Application is dismissed without leave to re-apply.

The Landlord is granted an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord's Application is granted in relation to the request to recover monies owed for unpaid rent, to keep the security deposit and for reimbursement of the filing fee. The Landlord is entitled to monetary compensation in the amount of \$2,800.00. I authorize the Landlord to keep the \$650.00 security deposit to offset the monies owed. I grant the Landlord a Monetary Order in the amount of \$2,150.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord's Application in relation to the request to recover monies owed for unpaid utilities is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 22, 2018

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Residential Tenancy Branch