



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking an order as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent, issued on April 30, 2018 (the "Notice").

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.

The tenant indicated that they have not received the landlord's evidence. The landlord stated it was sent by registered mail which was returned unclaimed.

The landlord confirmed they received evidence from the tenant.

In this case, even if the tenant did not receive the landlord's evidence package, I find it not prejudicial to the tenant as the notices to end tenancy were also provided by the tenant.

### Issues to be Decided

Should the notice to end tenancy for unpaid rent and utilities be cancelled?

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The parties entered into a fixed term tenancy agreement that began on November 2, 2017. The total rent of \$1,525.00, is payable each month. The total rent is comprised of rent (\$1,450.00) and utilities of (\$75.00). The tenant paid a security deposit of \$750.00 and a pet damage deposit of \$750.00 (the "Deposits")

The tenant testified that they received the Notice, for unpaid rent and utilities for April 2018. The tenant stated that they paid the landlord the balance of rent owed in cash in May 2018 which was witnessed by a friend; however, they did not pay the outstanding utilities as the landlord did not give them a written demand or provide copies of the bills. Filed in evidence is a copy of the Notice.

The tenant testified that they received a subsequent 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, issued on June 13, 2018, for unpaid rent for May 2018. The tenant stated that they gave cash to a friend to pay the landlord as they were away working at the time. Filed in evidence is a copy of the notice to end tenancy.

The tenant testified that they received a further subsequent 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, also issued on June 13, 2018, for unpaid rent for June 2018, which they did not pay. The tenant stated that they have not paid any rent for July 2018. Filed in evidence is a copy of the notice to end tenancy.

The landlord testified that they only received \$800.00 from the tenant for April 2018, rent. The landlord stated that the tenant did not pay them any cash for the balance of April 2018, rent. The landlord stated that the tenant's friend did not give them any cash for May 2018, rent and the tenant has not paid any subsequent rent.

### Analysis

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

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant admitted that they did not pay their portion of utilities for April 2018, because the landlord did not give them a written demand, nor provide them with copies of the utility bill. However, the landlord is not required to provide copies of the utility bills or provide a written demand when the tenancy agreements stated that the total rent due is \$1,525.00, which is comprised of rent and utilities. I find the tenant knew the utilities of \$75.00, were due and owing on April 1, 2018.

Further, the onus is on the tenant to prove the balance of \$600.00 for April 2018, rent was paid. While the evidence of the tenant was that they had a friend witness the cash payment made to the landlord in May 2018, the landlord disputed this. I find the tenant's evidence does not meet the burden of proof. The tenant provided no evidence, such as bank statements to prove they had the money and that it was taken out of their account. I find the tenant has failed to prove that the balance of rent for April 2018 was paid.

I find the tenant breached section 26 of the Act, when they failed to pay rent and utilities for April 2018, in the total amount of **\$675.00**.

Based on the above, I find the Notice, issued on April 30, 2018, is valid. I find the tenancy legally ended on May 10, 2018, which is the effective date of the Notice. The tenant is now overholding the premise.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I further do not accept that the tenant paid rent for May 2018, as it makes no sense that they were able to give their friend cash to pay the rent, when they claim they were working out of town at the time. I find it more likely than not that the tenant is fabricating

a story. I find the tenant breached section 26 of the Act, when they failed to pay May 2018, rent and utilities in the total amount of **\$1,525.00**.

The tenant admitted they did not pay rent or utilities for June or July 2018, in the total amount of **\$3,050.00**. I find the tenant breached section 26 of the Act.

Based on the above, I find that the landlord has established a total monetary claim of **\$5,350.00** comprised of unpaid rent as stated above and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the Deposits of **\$1,450.00** in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$3,900.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant failed to pay rent and utilities. The tenant's application is dismissed

The landlord is granted an order of possession, and may keep the Deposits in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: July 03, 2018

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Residential Tenancy Branch