



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, CNC, SS, PSF, OLC, OPR, OPC MNR, 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 orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent;
2. To cancel a One Month Notice to End Tenancy for Cause;
3. To suspend or set condition on the landlord's right to enter;
4. For the landlord to provide services or facilities required by the tenancy agreement or law;
5. To have the landlord comply with the Act;
6. To have the landlord make repairs to the rental unit; and
7. To recover the cost of filing the application.

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 and Procedural matters

The landlord stated that they only received the tenant's evidence one day before the hearing and indicates that the evidence should be excluded as the tenant did not comply with the rules of procedures and they have not had a fair opportunity to review it.

In this case, the tenant filed evidence to the landlord and the Residential Tenancy Branch one (1) day before the hearing. I find the tenant did not comply with the rules of procedures. Therefore, I find it appropriate to exclude the tenant's evidence.

At the outset of the hearing the parties agreed that the tenancy has ended. Therefore, as the tenant's application relates to the tenancy continuing. I find it not necessary to hear the merits of their application. The tenant's application is dismissed without leave to reapply.

Further, I find it not necessary to hear the merits of the landlord's application that relates to the order of possession. Therefore, the only issue for me to determine at today's hearing is whether the landlord is entitled to unpaid rent.

#### Issue to be Decided

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

#### Background and Evidence

The parties agreed that the tenancy began on July 1, 2017. Rent in the amount of \$1,150.00 was payable on the first of each month. The tenant did not pay a security deposit.

The landlord claims as follows:

a.	Unpaid rent for May and June 2018	\$2,300.00
b.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$2,400.00</b>

The landlord testified that the tenant did not pay rent for May and June 2018. The landlord stated the tenant vacated the rental unit on May 11, 2018; however, they did not remove their belongings until June 20, 2018. The landlord seeks to recover unpaid rent in the amount of \$2,300.00.

The tenant testified that they moved out of the rental unit because the power was cut off on May 11, 2018, and the landlord did not give them 30 days' notice that they were no longer providing this service. The tenant stated that there was a misunderstanding about the hydro account and they paid the outstanding bill when they became aware of matter.

The tenant testified that the hydro company gave them until May 11, 2018, to pay a deposit on the account; however, they did not pay this amount and the landlord took their name off the account and they had no power. The tenant stated that since they had no power they vacated the premise on May 11, 2018 and did not pick up their belongings until June 20, 2018. The tenant acknowledged that they had the gas account in their name.

The landlord argue that they tenant was always to have the hydro and gas account in their name. The landlord stated that they were unaware that the tenant did not change the hydro into their own name until they were notified of a large outstanding bill. The landlord stated the power

was cut off due to the tenant's failure to pay a deposit and have the account placed in their name.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

*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.*

...

In this matter, I accept the evidence of the landlord's over the tenant's, that the tenant was responsible to have the utilities in their name. This is supported by the tenant having the gas account in their name. While I accept this may have been an oversight of the tenant that does not release them from their obligations to have the account in their name. While the tenant may have left the premises on May 11, 2018, due to no hydro, I find that was not the fault of the landlord as the tenant simply could have paid the deposit and have the account placed in their name. The landlord was not required to give the tenant 30 days' notice, as this was not a service that was included in the rent.

Furthermore, the tenant did not vacate the rental unit as their personal belongings remained in the rental unit until June 20, 2018. I find the tenant breached section 26 of the Act, when they

failed to pay rent for May and June 2018 and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$2,300.00**.

I find that the landlord has established a total monetary claim of **\$2,400.00** comprised of the above described amount and the \$100.00 fee paid for this application. I grant the landlord an order under section 67 of the Act.

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 landlord is granted a monetary order.

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 12, 2018

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Residential Tenancy Branch