



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, PSF, RR (tenant); OPR, FFL (landlord)

### Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to Section 46(4);
- An order requiring the landlords to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 62(3);
- An order requiring the landlords to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order to reduce rent for repairs, services or facilities agreed upon but not provided.

The hearing also dealt with a cross-application by the landlords under the *Act* for the following:

- An order of possession for unpaid rent or utilities under section 46;
- A monetary order for unpaid rent or utilities pursuant to section 67;
- An order for reimbursement of the filing fee under section 72.

The landlords submitted an amendment to their claim on August 13, 2018 to increase their monetary claim to \$4317.20.

The tenant GM appeared on behalf of both tenants (“the tenants”). Both parties attended the hearing and were given full opportunity to provide affirmed testimony,

present evidence, cross examine the other party, and make submissions. No issues of service were raised. I find each party was served with the other's Notice of Hearing and Application for Dispute Resolution pursuant to section 89 of the *Act*.

At the outset, the tenants withdrew all their claims. Accordingly, all the tenants' claims are dismissed without leave to reapply.

### Issue(s) to be Decided

Are the landlords entitled to the following:

- An order of possession for unpaid rent or utilities under section 46;
- A monetary order for unpaid rent or utilities pursuant to section 67;
- An order for reimbursement of the filing fee under section 72.

### Background and Evidence

The landlords testified the parties entered into a fixed term tenancy agreement for one year commencing October 1, 2017 for monthly rent of \$1,595.00 payable on the first of the month. The agreement provides the tenants pay 55% of the hydro account for the building. A copy of the agreement was filed.

The utility invoice is submitted to the landlords in equal monthly payments and the parties agreed the tenants' portion is \$224.40 monthly payable to the landlords on the first of the month.

The tenants paid a security deposit of \$797.50 at the beginning of the tenancy which is held by the landlord.

The landlords personally served the tenants with a Ten-Day Notice on May 28, 2018. Proof of Service was filed. The tenants acknowledged receipt. The Ten-Day Notice stated \$673.00 was owing in outstanding utilities. The tenants acknowledge owing utilities in that amount on that day.

The Ten-Day Notice provided the tenants had five days from the date of service to pay the outstanding amount in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of June 7, 2018. The landlords testified no payments were received within the five-day period. They stated no payments whatsoever were subsequently received for either rent or utilities after this date.

The landlords submitted a monetary worksheet with their Application outlining their claims for rent and utilities reproduced as follows:

<b>Receipt/Estimate From</b>	<b>For</b>	<b>Amount</b>
E-MAILS	RENT & UTILITY	\$454.00
E-MAILS	JULY RENT & JUNE UTILITY	\$1819.4
E-MAILS	AUG RENT & JULY UTILITY	\$1819.4
E-MAILS	AUG UTILITY	\$224.40
		<b>\$4317.20</b>

The tenants denied owing anything to the landlords for rent or utilities.

The tenant GM testified she paid the outstanding amount of the utilities on June 1, 2018, four days after service of the Ten-Day Notice. She submitted documentary evidence of the issuance of a cheque on June 1, 2018 in the amount of \$680.00 from a government agency. The tenant GM testified she took the cheque to the landlords' bank and deposited it on that day.

The landlords initially denied receipt of the cheque. However, after searching their records, they testified the cheque was deposited but not until June 4, 2018 and was in amount of \$668.00. They did not submit documentary evidence to support this statement and said they were referring to a bank statement in their possession.

The tenants testified they were in receipt of government assistance in the amount of \$1,178.00 a month and submitted documentary evidence in this regard. The tenants testified a cheque was deposited monthly directly to the landlords' account by the government assistance program.

The tenants testified they paid the landlords the monthly balance owing for the rent, \$417.00, by bank transfer. The tenants filed evidence of bank transfers dated July 5 and August 1, 2018.

The landlords acknowledged receipt of some cheques, but could not provide dates or confirm amounts. The landlords stated the cheques stopped being deposited but could not be certain when this happened. The landlords denied receipt of the bank transfers from the tenants despite the evidence submitted by the tenants.

At the hearing, the landlords testified that rent and utilities for September 2018 had not been paid. However, the landlords subsequently acknowledged receipt of some “small amounts” of money “sometimes” since issuance of the Ten-Day Notice but could not provide dates or amounts.

The landlords testified the tenants owed \$4,877.17 in rent and utilities at the date of the hearing but were unable to provide any explanation for this calculation. The tenants stated that all rent and utilities had been paid and nothing was owing the landlords.

### Analysis

I have reviewed all documentary evidence and testimony. I will not refer to all the documentary evidence or testimony in my decision but only to that which is material and relevant to my findings.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*. I find the tenants were served with the Ten-Day Notice on May 28, 2018. I find the tenants were served in accordance with section 88.

In the absence of any evidence to the contrary, I accept the tenants’ testimony supported by a government issued document and find the tenants paid in full the amount owing in the Ten-Day Notice of \$673.20 by a cheque deposited to the landlords’ account on June 1, 2018 within the five-day period set out in the notice.

I therefore dismiss the landlords’ application for an order of possession for non-payment of rent or utilities without leave to reapply.

The landlords claim a monetary order of \$4,877.17 for outstanding rent and utilities. It is incumbent on the landlords to submit evidence in support of their claim. The landlords have the burden of proving their claim on a balance of probabilities, meaning it is more likely than not to be true.

However, the tenants have submitted testimony and evidence conflicting with the landlords’ claims, raising doubt about what is owed. I am not satisfied that the landlords have met the standard of proving on a balance of probabilities what is owed by the tenants.

I therefore dismiss the landlords’ claim for a monetary order with leave to reapply.

As the landlords have not been successful in their claims, I do not grant reimbursement of the filing fee.

Conclusion

The landlords' application for an order of possession is dismissed without leave to reapply.

The landlords' application for a monetary order is dismissed with 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: September 19, 2018

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Residential Tenancy Branch