



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNR, LRE, OLC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover her fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

### Preliminary Issue(s)

At the outset, both parties confirmed that the tenant vacated the rental unit on January 15, 2019. As such, the landlord's request for an order of possession, the tenant's request for an order cancelling the 10 Day Notice were cancelled by each party. As well, the tenant cancelled the remaining portions of his application as the tenancy has ended. The hearing shall proceed on the landlord's monetary claim only.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, unpaid utilities and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

In this case, both parties agreed that no signed tenancy agreement was made, but a verbal agreement existed in which the monthly rent is \$800.00 divided into two \$400.00 payments each month.

The landlord seeks a clarified monetary claim of \$1,163.69 which consists of:

\$302.05	Unpaid Utilities, Hydro, July 1, 2018 to November 14, 2018 (30% of the total invoice(s))
\$165.00	Unpaid Internet 30% of the total invoices
\$246.64	Unpaid Satellite TV, 30% of total invoices
\$400.00	Unpaid Rent, December 15-31
\$400.00	Unpaid Rent, January 1-15
\$1,513.69	Total

The landlord indicated that the tenant made a payment to the landlord for utilities of \$350.00.

\$1,513.69	Total
-\$350.00	Payments made by tenant
\$1,163.69	Total Claim sought by landlord

The landlord provided affirmed testimony that a verbal tenancy agreement was made in which the tenant agreed to paying 30% of each invoice. The tenant disputed this claim stating that no agreement was made regarding the utilities, but that discussions took place to determine how much the tenant would pay. The tenant stated nothing was finalised. The landlord stated that she had a spreadsheet and invoices breaking down

the owed amounts as well as a tenant ledger to explain what was owing and the payments made by the tenant. The landlord could not produce the spreadsheet or the tenant ledger. The tenant provided undisputed affirmed testimony that his last rent payment was on December 2, 2018 and that once he received the 10 Day Notice from the landlord dated December 20, 2018 no further payments were made. The tenant reiterated that he complied with the 10 Day Notice by vacating the rental unit on January 15, 2019. The landlord further argued that the tenant has periodically paid amounts for utilities as demonstrated in the last \$350.00 payment received by the landlord. The tenant confirmed in his direct testimony that he “pays everything I can afford” when asked about the noted payments.

### Analysis

In this case, both parties confirmed that the tenancy ended on January 15, 2019 as a result of the landlord serving the tenant with a 10 Day Notice dated December 20, 2018.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has outlined a monetary claim of \$1,163.69 for unpaid rent and utilities as outlined above in this decision. The tenant has confirmed that no rent was paid for the period December 15-31, 2018 and again January 1 to 15, 2019 while occupying the rental space. The tenant did not argue that utilities were owed, but that no agreement on how much the tenant was to pay were ever made. The landlord has asserted that a verbal agreement was made by both parties for the tenant to pay 30% of each invoice. In this case, the landlord relies on her direct testimony that a verbal agreement was made for the tenant to pay a 30% share of the total invoice(s) received. The tenant has disputed this claim. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant and find that the landlord has established a monetary claim as filed for \$1,163.69. The landlord provided undisputed affirmed testimony regarding the amounts owed for each invoice. The landlord has also provided undisputed evidence that she has a tenant ledger detailing the amounts owed as well as

various payments made by the tenant for the utilities. I also take into consideration that the tenant has not disputed that utilities were owed as part of the tenancy.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted a monetary order for \$1,263.69.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: February 05, 2019

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Residential Tenancy Branch