



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL OPRM-DR

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The landlord applied by way of the Direct Request process, which was adjourned to this participatory hearing.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence relevant to this application has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Should the landlord recover filing fees for this application and previous applications from the tenant?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on November 24, 2018 and expires on November 30, 2019 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,475.00 per month is payable on the 1<sup>st</sup> day of each month, in addition to \$100.00 for hydro. The hydro

account is in the landlord's name, and the tenant is required to pay that amount each month on the 1<sup>st</sup> day of each month, and the landlord pays the hydro bills.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$737.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the top level of a house, and the basement suite is also tenanted. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on April 5, 2019 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated April 5, 2019 and contains an effective date of vacancy of April 18, 2019 for unpaid rent in the amount of \$1,550.00 that was due on April 1, 2019. The landlord testified that the amount is incorrect, and should read \$1,475.00 for rent and \$100.00 for the hydro.

The tenant has not paid any rent since the issuance of the notice to end the tenancy, and has not served the landlord with an Application for Dispute Resolution disputing it.

The landlord has also provided a Direct Request Worksheet setting out the following claims for a total of \$1,550.00:

- \$75.00 for March, 2019 rent; and
- \$1,475.00 for April, 2019 rent.

The tenant has fallen further into arrears by not paying any rent for April, May or June, 2019 and hasn't paid hydro. The landlord claims \$175.00 for March rent, plus \$100.00 for hydro for that month, as well as \$1,475.00 rent and \$100.00 hydro for each of April, May and June, 2019.

The landlord also testified that this is the 3<sup>rd</sup> time the landlord has had to file an Application for Dispute Resolution and claims the filing fees for each of those Applications. On one occasion, the landlord's property manager made an error in the spelling of the landlord's name, and on another occasion the landlord failed to provide all pages of the tenancy agreement. The landlord testified that he is entitled to reimbursement by the tenant.

**The tenant** testified that she had understood that the amount owed for March is \$175.00 including hydro. The tenant paid \$650.00 on March 5 and another \$750.00 on March 26, 2019. The landlord's Direct Request Worksheet has the dates confused.

Rent was paid by e-transfer and the tenant sent 2 e-transfers of \$325.00 on April 24, 2019 and another \$950.00 on the 27<sup>th</sup> of the month. Both were unclaimed by the landlord, and on Apr 27, 2019 the landlord arrived with police and said in a very loud tone that the tenant never, ever paid any rent. Police told him to calm down, and told the tenant to take back the e-transfers, which she did, later in the afternoon of April 27, 2019.

### Analysis

Firstly, the *Residential Tenancy Act* specifies that once served, or deemed served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) the tenant has 5 days to dispute it or pay the rent in full. If the tenant pays the rent within that 5 day period, the notice is of no effect. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to possession of the rental unit, so long as the Notice is in the approved form.

I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*, however the landlord testified that the amount is incorrect.

The landlord testified that the Notice was served by posting it to the door of the rental unit on April 5, 2019. Documents served by posting them to the door or other conspicuous place are deemed to have been served 3 days later, which in this case is April 8, 2019. The tenant testified that the tenant sent 2 e-transfers of \$325.00 on April 24, 2019 and another \$950.00 on the 27<sup>th</sup> of the month, both of which were unclaimed by the landlord, however both payments were beyond the 5 days and were not payment in full. The landlord also testified that the tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice, and I have no such Application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect to the landlord's monetary claim, unpaid rent and unpaid utilities are very separate under the *Act*. In this case, the tenancy agreement specifies \$100.00 per month for utilities, payable to the landlord on the 1<sup>st</sup> day of each month.

I accept the testimony of the tenant that the tenant paid \$650.00 on March 5 and \$750.00 on March 26, 2019, which is \$1,400.00, which is consistent with the landlord's

Direct Request Worksheet. I find that the landlord is entitled to \$75.00 for unpaid rent and \$100.00 for March, 2019 utilities.

I also accept the undisputed testimony of the landlord that the tenant has not paid any rent for April or May or June, 2019. I also accept the undisputed testimony that the tenant paid \$325.00 on April 24 and \$950.00 on April 27, 2019, both of which were refused by the landlord. A landlord must not refuse rent, however given that the payments were made well after the Notice was given, I find that the landlord is owed \$4,425.00 for rent for those months. I also find that the landlord has established a claim of \$100.00 for hydro for each of the months of April and May and June, 2019.

Where a party is successful with an application, the party is generally entitled to recovery of the filing fee, which in this case is \$100.00. However, the landlord also testified that he is entitled to filing fees from previous unsuccessful applications. If the landlord were entitled to recovery of filing fees, the Decisions would specify that, and unsuccessful applications of the landlord due to errors made by the landlord or the landlord's property manager are not the responsibility of the tenant.

The landlord currently holds a security deposit of \$737.50, but has not applied for an order permitting the landlord to keep any portion of it. I order that the parties deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

In summary, I find that the landlord has established a claim for an Order of Possession on 2 days notice to the tenant and a monetary order in the amount of \$5,000.00, consisting of \$75.00 for unpaid rent for March, 2019; and \$4,425.00 for unpaid rent for April, May and June, 2019; \$400.00 for hydro for March, April, May and June, 2019, and \$100.00 for the filing fee of this Application.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,000.00.

I further order the parties to deal with the security deposit held in trust by the landlord in accordance with Section 38 of the *Residential Tenancy Act*.

This order is final and binding and may be enforced.

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: June 07, 2019

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Residential Tenancy Branch