



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE, RP (Tenant)  
                             FFL, MNRL, OPU (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlords filed the application June 27, 2019 (the “Landlords’ Application”). The Landlords applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 20, 2019 (the “10 Day Notice”), to recover unpaid rent and for reimbursement for the filing fee.

The Tenants filed the application June 28, 2019 (the “Tenants’ Application”). The Tenants applied to dispute the 10 Day Notice, to suspend or set conditions on the Landlords’ right to enter the rental unit and for repairs to be made to the unit.

The Landlords appeared at the hearing. Nobody appeared at the hearing for the Tenants.

The Landlords confirmed the rental unit address which is reflected on the front page of this decision.

I explained the hearing process to the Landlords and answered their question in this regard. The Landlords provided affirmed testimony.

The Landlords submitted evidence on their application prior to the hearing. The Tenants submitted the tenancy agreement and first page of the 10 Day Notice on their application prior to the hearing.

I addressed service of the hearing package and evidence for the Landlords' Application.

Landlord H.T. testified as follows. The hearing packages and evidence were sent to the Tenants twice. The first time the packages were left in the door handle of the rental unit on June 29, 2019. The Landlords submitted a photo of this. The second time the packages were sent to the rental unit by registered mail on July 11, 2019. The Landlords submitted customer receipts with Tracking Number 1 and 2 on them. I looked these up on the Canada Post website which shows notice cards were left July 15, 2019 and July 22, 2019. The packages were unclaimed and returned.

Based on the undisputed testimony of Landlord H.T., evidence of service submitted and Canada Post website information, I find the Tenants were served with the hearing packages and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the undisputed testimony of Landlord H.T. and Canada Post website information, I find the packages were sent July 11, 2019. The Tenants are deemed to have received the packages July 16, 2019 pursuant to section 90(a) of the *Act*. I find the Tenants were served in sufficient time to prepare for, and appear at, the hearing.

I also note the Tenants would have been aware of the hearing as the Tenants' Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants.

Rule 7.3 of the Rules of Procedure (the "Rules") states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.

Given the Tenants did not appear at the hearing, I have no evidence before me as to the basis for the Tenants' Application. In the absence of evidence from the Tenants, the Tenants' Application is dismissed without leave to re-apply.

The Landlords were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Landlords. I will only refer to the evidence I find relevant in this decision.

The Landlords' Application states that they are seeking \$3,291.00 for June rent, utilities and July rent. The Landlords submitted a Monetary Order Worksheet seeking July rent, August rent and utilities for May to July. The 10 Day Notice was issued for unpaid rent and utilities. I find the Landlords' Application clear that the Landlords are seeking unpaid utilities and have considered this issue as well.

#### Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to recover unpaid utilities?
4. Are the Landlords entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started June 01, 2017 and was for a fixed term ending May 31, 2018. Rent is \$2,600.00 per month due on the first day of each month. It states that the Tenants will pay 2/3 of the utilities bill (Water, Electricity, Gas). The Tenants paid a security deposit of \$1,300.00. The agreement is signed by the Landlords and Tenants.

The Landlords sought to keep the security deposit towards unpaid rent.

The 10 Day Notice states that the Tenants failed to pay \$100.00 in rent due June 01, 2019 and \$591.00 for utilities following written demand on May 21, 2019. It is addressed to the Tenants and refers to the rental unit. It is signed and dated by Landlord H.T. It has an effective date of June 30, 2019.

Landlord H.T. testified that both pages of the 10 Day Notice were served on Tenant C.R. in person June 20, 2019. The Landlords submitted a Proof of Service signed by a witness confirming this.

The Tenants disputed the 10 Day Notice June 28, 2019. The Tenants submitted a copy of the first page of the 10 Day Notice as evidence.

Landlord H.T. testified that the Tenants failed to pay \$100.00 of June rent and this is reflected on the 10 Day Notice. Landlord H.T. testified that the Tenants did not have

authority under the *Act* to withhold rent. Landlord H.T. testified that the Tenants said the amount transferred for June rent was their e-transfer limit.

Landlord H.T. testified that the Tenants have not paid any rent or utilities since the 10 Day Notice was issued. Landlord H.T. testified that \$100.00 of June rent, all of July rent and all of August rent is currently outstanding.

The Landlords submitted a text from Tenant C.R. stating that he does not have to pay rent until the matter is settled in court. This is dated July 02, 2019.

The Landlords submitted a text conversation in which the Landlords ask Tenant C.R. why the rent payment is \$2,500.00 and Tenant C.R. replies stating, "Sorry my etrasfer has a limit I'll send you another 100 ASAP When the banks let's me".

In relation to utilities, the Landlords are seeking the following:

- \$591.00 for gas, electricity and water for March and April;
- \$70.12 for May gas;
- \$40.85 for June gas;
- \$41.82 for July gas; and
- \$156.50 for May and June electricity.

The Landlords submitted an email sent to the Tenants May 22, 2019 outlining the basis for the \$591.00 owing for gas, electricity and water.

The Landlords submitted bills for the gas, electricity and water which support the amounts sought and outlined above.

The Landlords submitted texts sent to the Tenant about paying the utilities.

Landlord H.T. testified that all utility bills were provided to the Tenants. Landlord H.T. testified that the Tenants were sent demands to pay the utilities by text, email and that the bills were mailed to them.

## Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the other for damage or loss that results.

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows landlords to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant has disputed a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the written tenancy agreement, I find the Tenants were obligated to pay \$2,600.00 for June rent by June 01, 2019. I accept the undisputed testimony of Landlord H.T. and find the Tenants did not have authority under the *Act* to withhold June rent. There is no evidence before me that they had such authority. Further, based on the text from Tenant C.R. in evidence, I find the Tenants failed to pay \$100.00 of June rent because of their e-transfer limit. This is not a valid basis to fail to pay rent. I find the Tenants were required to pay \$2,600.00 for June rent by June 01, 2019 under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of Landlord H.T., I accept that the Tenants failed to pay \$100.00 of June rent. I find this is supported by the texts from Tenant C.R. in evidence regarding rent.

Given the Tenants failed to pay rent as required, the Landlords were entitled to serve them with the 10 Day Notice pursuant to section 46(1) of the *Act*. Based on the undisputed testimony of Landlord H.T. and Proof of Service, I find the Tenants were served with the 10 Day Notice in accordance with section 88(a) of the *Act*. Given the 10 Day Notice was served in person, I find the Tenants received it June 20, 2019. I also note that the Tenants must have received the 10 Day Notice as they disputed it and submitted a copy of the first page of the 10 Day Notice as evidence.

Upon a review of the 10 Day Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the 10 Day Notice on June 20, 2019 to pay or dispute it under section 46(4) of the *Act*. The Tenants had until June 25, 2019 to dispute the 10 Day Notice. The Tenants filed the dispute June 28, 2019, outside of the time limit for doing so. The Tenants did not seek more time to file their application. Nor did the Tenants appear at the hearing.

I accept the undisputed testimony of Landlord H.T. that the Tenants have not paid any rent since the 10 Day Notice was issued. I find this is somewhat supported by the text from Tenant C.R. submitted.

I find the Tenants did not pay the outstanding rent, or dispute the 10 Day Notice, within the time limit set out in section 46(4) of the *Act*. Therefore, pursuant to section 46(5) of the *Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended June 30, 2019, the effective date of the 10 Day Notice. The Tenants were required to vacate the rental unit by June 30, 2019.

I note that, even if the Tenants had disputed the 10 Day Notice within the five-day time limit, their dispute has been dismissed without leave to re-apply. The Landlords therefore would have been entitled to an Order of Possession pursuant to section 55(1) of the *Act* in any event.

The Landlords are entitled to an Order of Possession. The Order is effective at 1:00 p.m. on August 31, 2019.

I accept the undisputed testimony of Landlord H.T. that \$100.00 of June rent, all of July rent and all of August rent is currently outstanding. I find this is somewhat supported by the text from Tenant C.R. submitted. I find the Tenants owe the Landlords \$5,300.00 in unpaid rent and award the Landlords this amount.

Based on the written tenancy agreement, I accept that the Tenants were obligated to pay 2/3 of the water, electricity and gas bills for March to July. Based on the bills submitted, I accept that the Tenants owe the amount claimed for utilities. I accept the undisputed testimony of Landlord H.T. that the bills were sent to the Tenants so that they were aware of them. This is somewhat supported by the May 22, 2019 email and texts submitted. I accept the undisputed testimony of Landlord H.T. that the Tenants did not pay the utilities as required. I accept that the Tenants owe the Landlords \$900.29 for utilities and award the Landlords this amount.

As the Landlords were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to monetary compensation in the amount of \$6,300.29. The Landlords can keep the \$1,300.00 security deposit pursuant to section

72(2) of the *Act*. Pursuant to section 67 of the *Act*, I award the Landlords a Monetary Order for the remaining \$5,000.29.

### Conclusion

The Tenants' Application is dismissed without leave to re-apply.

The Landlords are granted an Order of Possession effective at 1:00 p.m. on August 31, 2019. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to monetary compensation in the amount of \$6,300.29. The Landlords can keep the \$1,300.00 security deposit. The Landlords are issued a Monetary Order for the remaining \$5,000.29. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: August 22, 2019

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Residential Tenancy Branch