



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, OPUM-DR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for non-payment of rent and utilities pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent and utilities pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The landlord testified that tenant, S.K. started the tenancy in approximately October 2018. The landlord did not have a copy of the tenancy agreement. The landlord testified that tenant S.K. took the tenancy agreement to copy and she did not return it. The landlord testified that the monthly rent was \$2,450.00 and the tenant paid a security deposit of \$1,250.00 which the landlord still holds.

Tenant, S.K. testified that she stopped living in the rental unit in December 2018 and she removed her possessions later. The landlord testified that tenant S.K. still resides in the rental unit. The landlord argued that emails sent from S.K. indicated that she still resides there.

Tenant, A.L. signed a tenancy agreement in February 2019. The landlord testified that terms of the tenancy agreement were the same as tenancy agreement signed with S.K. The landlord testified that the February 2019 tenancy agreement just added tenant A.L. to the tenancy agreement. The landlord testified that S.K. and A.L. both reside at the rental unit.

The landlord's witness, A.E. testified that she saw both tenants sign the tenancy agreement in October 2018. The tenants disagreed with this testimony. The tenants testified that tenant S.K. signed a tenancy agreement in October 2018 and tenant A.L. signed a different tenancy agreement in February 2019.

The landlord sent a written demand for payment of utilities in the amount of \$987.97 to the tenants on June 14, 2019. On June 23, 2019, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice"). The Ten-Day Notice stated unpaid rent of \$2,450.00 from December 2018 and unpaid utilities of \$987.97 based upon a written demand on June 14, 2019.

The landlord testified that the tenants' rent cheques for January 2019, February 2019 and March 2019 were all rejected by the landlord's financial institution. The landlord provided copies of the returned cheques. The landlord testified that the February 2019 and March 2019 rent was subsequently paid but the January 2019 rent remains unpaid. The landlord acknowledged that the December 2018 rent had been paid prior to the service of the Ten-Day Notice.

The tenants testified that they timely provided rent cheques to the landlord for January 2019, February 2019 and March 2019. The tenants testified that, unknown to them, the landlord did not deposit these cheques and the landlord lost them. The tenants testified that they provided replacement cheques but these cheques did not clear because the landlord deposited the replacement cheques early. The tenants testify that rents for January 2019, February 2019 and March 2019 have since all been fully paid.

The landlord provided gas and electric utility company invoices relating to the rental property with due dates ranging from November 16, 2018 to July 16, 2019. The landlord acknowledged payment of the utility invoice due on November 16, 2018. The following are the invoices which the landlord claims reimbursement herein:

<u>Due Date</u>	<u>Type of Utility</u>	<u>Amount</u>
January 15, 2019	Gas	\$162.68
February 12, 2019	Electricity	\$157.54
February 15, 2019	Gas	\$189.03
March 19, 2019	Gas	\$238.96
May 17, 2019	Gas	\$106.35
June 13, 2019	Electricity	\$158.69
July 16, 2019	Gas	\$52.73
TOTAL		\$1,062.98
Tenants' Share (60% of utilities)		<b>\$637.79</b>

### Analysis

The landlord has requested an order of possession, a monetary order for unpaid rent, a monetary order for unpaid utilities and recovery of the filing fee. I will address each request separately.

#### i. Request for order of possession

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid after it is due by giving the tenant a ten-day notice to end tenancy. In this matter, the landlord issued a Ten-Day Notice stating unpaid rent of \$2,450.00 for December 2018 and unpaid utilities of \$987.97 based upon a written demand on June 14, 2019.

Section 46 of the *Act* states that, tenants have five days after receipt of a notice to end a tenancy for unpaid rent to pay the entire amount of outstanding rent or file an application to dispute the notice. In this matter, the landlord testified that the unpaid rent stated on the Ten-Day Notice of \$2,450.00 for December 2018 had been paid by the tenants prior to the service of the Ten-Day Notice. Accordingly, the tenants had fully discharged their obligations to pay the December 2018 rent when the Ten-Day Notice was issued. As such, the Ten-Day Notice cannot be upheld on the basis of unpaid rent.

The landlord also served the Ten-Day Notice on the basis of unpaid utilities. Section 46(6) of the *Act* permits a landlord to issue a Ten-Day for unpaid utilities if "...the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them." In this matter, the written demand to pay the utility charges was delivered on June 14, 2019, only 9 days before the Ten-Day Notice was issued which is less than the 30 days required by section 46(6). Section 52 of the *Act* requires a Ten-Day Notice to state the grounds for ending the tenancy, and ending a tenancy based upon unpaid utilities less than 30 days after the delivery of a written demand to pay utilities is not a valid ground to end a tenancy. As such, the Ten-Day Notice cannot be upheld on the basis of unpaid utilities.

Since the landlord's Ten-Day Notice is not effective, I find that the landlord is not entitled to an order of possession based upon the Ten-Day Notice pursuant to section 55 of the *Act*. This tenancy shall continue until it ends pursuant to the *Act*.

ii. *Request for unpaid rent*

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("*RTB Rules*"), Rule 6.6 state that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that *RTB Rule* 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in his claim.

I find that S.K. and A.L. are both tenants under the same tenancy agreement. Although S.K. testified that she moved out of the rental unit, I find that, based on the email communications provided, that S.K. continues to have a possessory interest in the rental unit. Based upon the agreed testimony of the parties, I find that the tenants were both obligated to pay the monthly rent in the amount of \$2,450.00 each month pursuant to the tenancy agreement.

However, I find that the landlord has not provided sufficient evidence to establish that the January 2019 rent remains unpaid. Although the landlords testified that the January 2019 rent has not been paid, the tenants testified that it has been paid. The burden of proving that the January 2019 rent has not been paid is upon the landlord. The landlord has not produced bank records or a rental payment ledger evidencing the payment history.

In addition, the accuracy of the landlord's record-keeping is also brought into question by the landlord stating that the December 2018 rent was unpaid on the Ten-Day Notice and then admitting that it had been in fact been paid. In addition, the tenants testified that landlord lost the January 2019, February 2019 and March 2019 rent cheques. Further, there was lengthy delay before the landlord issued the Ten-Day Notice on June 23, 2019 for unpaid rent. These multiple irregularities in the processing of the tenants' rent cheques raises questions of the accuracy of the landlord's records.

For the forgoing reasons, I find that the landlord has failed to provide sufficient evidence to establish that the tenants owe rent for January 2019. Accordingly, the landlord's application for unpaid rent is dismissed.

iii. Request for unpaid utilities

Based upon the testimony of the parties, I find that the tenants agreed to pay 60% of the utilities for the rental unit. Further, based upon the utility invoices provided, I find that the landlord has incurred \$1,062.98 in utility invoices relating to the property. Further, I find that the tenant's share of these utility expenses is 60% of this amount, being \$637.79. Based on the agreed testimony of both parties, I find that the tenants have paid the sum of \$51.00 towards the utilities after this application was filed.

Accordingly, I find that the tenants owe the landlord the sum of \$586.79 for utilities (\$637.79 less credit for payment of \$51.00) Accordingly, I grant the landlord a monetary order of \$586.79. The landlord may satisfy this award by deducting the sum of \$586.79 from the tenants' security deposit pursuant to section 72(2) of the *Act*.

iv. Request for recovery of filing fee

The landlord's application for recovery of the filing fee is dismissed pursuant to section 72(1) because the Residential Tenancy Branch records indicate that the landlord did not pay a filing fee to commence this application.

Conclusion

The landlord's application for an order of possession is dismissed. This tenancy shall continue until it ends pursuant to the *Act*.

The landlord's application for a monetary order for unpaid rent is dismissed.

The landlord's application for a monetary order for unpaid utilities is granted in the amount of \$586.79. The landlord may satisfy this award by deducting the sum of \$586.79 from the tenants' security deposit.

The landlord's application for recovery of the filing fee is dismissed.

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 09, 2019

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Residential Tenancy Branch