



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NAI GODDARD & SMITH  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes    OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on June 25, 2020. A Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord's agent, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary Issue

Although the landlord's application does not check the box that they are seeking a monetary order for unpaid rent and utilities. However, I am satisfied based on the details of the dispute and the attached monetary worksheet that the tenant had to know this was an issue to be dealt with at this hearing. Therefore, I have amended the landlord's claim to include unpaid rent and utilities, pursuant to section 62(3) of the Act. I find this not prejudicial to the tenant as rent and utilities is the most basic term of a tenancy agreement.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

### Background and Evidence

The tenancy began in August 2019. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant

The landlord's agent testified that when the tenancy first commenced there were no issues with rent being paid. The agent stated the problems began in November 2019, where the tenant's rent cheques would be returned NSF. The agent stated that they were working with the tenant on this issue.

The landlord's agent testified that the tenant did not pay rent for February 2020 and had cut off all contact. The agent stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 28, 2020 by posting to the door, which was witnessed and a copy was also sent by mail.

The landlord's agent testified that the tenant failed to pay rent for February 2020 and has not paid any subsequent rent since. The agent stated that it has now been six months of no payment of rent. The landlord seeks an order of possession and to recover unpaid rent in the amount of \$6,000.00.

The landlord's agent testified that the tenant was required to have the utilities in their own name; however, the tenant only made promises to do so. The agent stated they did not have the hydro removed from their name because they did not want the rental unit without the hydro. The agent stated that the tenant has not paid the amount owed. The landlord seeks to recover unpaid utilities in the amount of \$659.90.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I find the tenant was deemed served with the Notice three days after it was posted which was February 28, 2020. The tenant has not paid the outstanding rent and did not apply to dispute the notice and is therefore conclusively presumed under section 46(5)

of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on March 15, 2020, which is the of vacancy date in the Notice and that the tenant is overholding the premise as an occupant.

I accept the undisputed testimony of the landlord's agent that the tenant has failed to pay rent from February 2020 to July 2020, I find the tenant has breached section 26 of the Act and the landlord has suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$6,000.00**

I further accept the undisputed testimony of the landlord's agent that hydro was not included in the rent. This is supported by the tenancy agreement. I find the tenant breached the tenancy agreement when they failed to have the utilities place in their name and when they failed to pay the landlord the cost of the hydro. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$659.90**.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find that the landlord has established a total monetary claim of **\$6,759.90** comprised of unpaid rent for the above said months and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim to offset the amount owed, and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$6,259.90**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: July 16, 2020

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Residential Tenancy Branch