



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, RP, CNR, OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant filed under the Residential Tenancy Act (the “Act”).

The landlord’s application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent and utilities and other money owed;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant’s application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
2. To have the landlord make repairs to the rental unit; and
3. To suspend or set conditions on the landlord’s right to enter the rental unit.

Only the landlord’s agent appeared.

### Tenant’s application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for twenty minutes and the only participant who called into the hearing during this time was the landlord’s agent. Therefore, as the tenant did not attend the hearing by 11:20 A.M, I dismiss the tenant’s application without leave to reapply.

### Landlord's application

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on March 30, 2021, a Canada post tracking number was provided as evidence of service. The agent stated the package was successfully delivered to the tenant.

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 tenant has been duly served in accordance with the Act.

The landlord's agent testified that the tenant was also served with their amended application on May 10, 2021, by registered mail.

The landlord's agent stated that on May 3, 2021, the landlord received an order of possession based on an early end to tenancy, pursuant to section 56 of the Act. As the tenant was found to have put other occupants of the rental building at risk. The agent stated that the tenant vacated the premise on May 15, 2021 and they do not need an order of possession. I have noted the file number on the covering page of this decision.

In this matter the landlord is claiming the cost of selling their vehicle to assist them financially; however, I find that is money received by the landlord and was a personal choice. The tenant is only responsible for loss that are related to their tenancy, such as unpaid rent. Therefore, I decline to hear this portion of the landlord's claim.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, utilities and other money owed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on January 15, 2021. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenant paid a security deposit of \$1,100.00. The tenancy ended on May 15, 2021.

The landlord claims as follows:

a.	Unpaid rent	\$7,200.00
b.	Unpaid utilities	\$1,064.39
c.	Refusal to allow electrician in premises	\$ 100.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$8,464.39</b>

The landlord's agent testified that the tenant did not pay all rent owed for February 2021, as there was a shortfall of \$600.00. The landlord stated that the tenant did not pay rent for March, April, or May 2021. The landlord seeks to recover unpaid rent in the amount of \$7,200.00.

The landlord's agent testified that the tenant rented the upper portion of the premises and was required to pay 60% of the utilities, which was for gas, hydro and water. The agent stated that the tenant paid not utilities in accordance with the addendum to their tenancy agreement. The landlord seeks to recover unpaid utilities in the amount of \$1,064.39. Filed in evidence is the addendum to the tenancy agreement. Filed in evidence are utility invoices.

The landlord's agent testified that they had hired an electrician to fix a problem in the rental unit that was related to the carbon monoxide leak. The agent stated that the tenant refused access, which they received an order of possession under section 56 of the Act. The agent stated that because the tenant had refused access and changed the locks the electrician could not and access the premise. The agent stated they had to pay the electrician \$100.00 for attending the premise. The landlord seeks to recover the cost. Filed in evidence is an electrician invoice.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

***26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.***

...

I accept the undisputed testimony of the landlord's agent that the tenant failed to pay all rent for February 2021, and failed to pay any rent for March, April, and May 2021. I find the tenant has breached section 26 of the Act, and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent in the total amount of **\$7,200.00**.

I accept the undisputed testimony of the landlord's agent that the tenant was required to pay 60% of the utilities. This is supported by the addendum to the tenancy agreement filed in evidence that was signed by the tenant. I find the tenant has breached their tenancy agreement when they failed to pay their portion of utilities and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$1,064.39**.

I accept the undisputed testimony of the landlord's agent that they were invoice the amount of \$100.00 by the electrician who attend the premise and was denied access by the tenant. The Arbitrator in the decision of May 3, 2021 found the tenant refused entry

to the unit. . Therefore, I find the landlord is entitled to recover the cost in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$8,464.39** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,100.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$7,364.39**.

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's application is dismissed without leave to reapply.

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal 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: June 11, 2021

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Residential Tenancy Branch