



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT (Tenants)  
                             OPUM-DR, OPU-DR, FFL (Landlord)

### Introduction

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

The Tenants filed their application March 19, 2021 (the “Tenants’ Application”). The Tenants applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 14, 2021 (the “10 Day Notice”) and to recover the filing fee.

The Landlord filed his application March 21, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the 10 Day Notice
- To recover unpaid rent and utilities
- To recover the filing fee

I note that the Landlord also sought compensation for registered mail; however, as explained to the Landlord at the hearing, these costs are not recoverable and therefore I have not considered them.

The Tenants appeared at the hearing. The Landlord appeared at the hearing with his Father. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord submitted two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. The Landlord confirmed he was only seeking an Order of Possession on the 10 Day Notice.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing packages and Landlord's evidence.

The Landlord testified that he did not receive the hearing package for the Tenants' Application. Tenant S.H. testified that the Tenants' Application was not served on the Landlord because the Tenants did not have the Landlord's address.

The Tenants acknowledged receipt of the hearing package and evidence for the Landlord's Application.

Pursuant to section 59(3) of the *Residential Tenancy Act* (the "Act") and rule 3.1 of the Rules, the Tenants were required to serve the hearing package for their application on the Landlord. I do not accept that the Tenants did not have an address for the Landlord as the Tenants acknowledged receipt of the hearing package for the Landlord's Application which has the Landlord's address on it. In any event, the hearing package had to be served and was not served. Therefore, the Tenants' Application is dismissed **with** leave to re-apply in relation to the dispute of the 10 Day Notice and dismissed **without** leave to re-apply in relation to recovery of the filing fee. However, I note that I will consider the 10 Day Notice on the Landlord's Application.

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

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
2. Is the Landlord entitled to recover unpaid rent and utilities?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord and Tenants. The tenancy started October 15, 2020 and is for a fixed term ending November 30, 2021. Rent is \$2,490.00 per month. The Landlord confirmed rent is due on the first day of each month. The Tenants paid a \$1,245.00 security deposit and

\$1,245.00 pet damage deposit. The agreement has an addendum. The agreement is signed by the Landlord and Tenants.

The Landlord confirmed the written tenancy agreement is accurate.

Tenant S.H. testified that the Tenants never met the Landlord and only dealt with the Landlord's parents. Tenant S.H. testified that they do not know who signed the written tenancy agreement. Tenant S.H. testified that most of the details of the written tenancy agreement are accurate, other than in relation to who the landlord is and who signed it.

The Landlord confirmed he owns the rental unit and signed the written tenancy agreement.

The Tenants confirmed they signed the written tenancy agreement. At the end of the hearing, Tenant T.A. submitted that there are discrepancies on the written tenancy agreement.

The 10 Day Notice was submitted. The 10 Day Notice is blank under the section that states, "I, the Landlord, give you 10 days' notice to move out of the rental unit/site located at".

The parties agreed the Tenants did not pay March rent and that the Tenants' March rent cheque bounced. Tenant S.H. testified that the Tenants did not have authority to withhold March rent. The Tenants testified that they have tried to pay rent by other methods and the Landlord has refused to allow this.

The parties agreed the Tenants have not paid any rent since being issued the 10 Day Notice.

The Landlord denied that the Tenants have tried to pay rent by other methods and that he refused to allow this.

The parties agreed rent for March to June is outstanding for a total of \$9,960.00.

The Landlord testified that \$402.82 in utilities is currently outstanding.

The Tenants testified that they are not responsible for paying for utilities such as water, garbage and sewer. The Tenants testified that they were told by the Landlord's father that they were only responsible to pay for hydro, gas, internet, cable and a phone. The

Tenants also testified that there is an issue with the plumbing in the rental unit and therefore the water bill is higher than it should be.

The Landlord relied on term three in the addendum to the tenancy agreement for the position that the Tenants owe for utilities. The Landlord denied that the Tenants were told they are only responsible to pay for hydro, gas, internet, cable and a phone. The Landlord testified that the water bill for the rental unit said they may want to check for leaks, they did check for leaks and there were no leaks.

The Landlord submitted utility bills. The Landlord submitted documentary evidence in relation to inspecting the rental unit regarding the high usage of water.

### Analysis

#### ***Order of Possession based on the 10 Day Notice***

Section 52 of the *Act* states:

**52 In order to be effective**, a notice to end a tenancy must be in writing and **must**

(a) be signed and dated by the landlord or tenant giving the notice,

**(b) give the address of the rental unit,**

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy...

**(e) when given by a landlord, be in the approved form.**

(emphasis added)

Pursuant to section 52 of the *Act*, the 10 Day Notice had to be completed correctly. The 10 Day Notice was not completed correctly as it does not include the rental unit address in the relevant section. I do not find it sufficient that the rental unit address is listed under the Tenants' contact address. I find sections 52(b) and (e) of the *Act* mean that the RTB-30 form needs to be completed correctly and the 10 Day Notice has not been completed correctly. Therefore, the 10 Day Notice is not an effective notice and I

decline to issue an Order of Possession based on it. This request is dismissed without leave to re-apply.

***Recovery of unpaid rent and utilities***

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 [landlord] for damage or loss that results.

Section 26(1) of the *Act* states:

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 that the written tenancy agreement submitted is accurate because the parties signed it and the Tenants have not provided documentary evidence to support that the written tenancy agreement is not accurate.

I accept that the Landlord signed the written tenancy agreement because the copy before me is signed by the Landlord and the Tenants have not provided documentary evidence to support that the written tenancy agreement was not signed by the Landlord or was signed by someone else.

Further, I do not find it particularly relevant whether the Tenants dealt with the Landlord directly or with the Landlord's parents. I accept that the Landlord owns the rental unit because the Tenants have not provided documentary evidence showing otherwise. The Landlord, as owner of the rental unit, is a "landlord" as that term is defined in section 1 of the *Act*. The Landlord was permitted to have agents act on his behalf and therefore it was permissible for the Landlord's parents to deal with the Tenants. The obligations of the Tenants pursuant to the tenancy agreement remained the same whether the Tenants dealt with the Landlord directly or the Landlord's parents as agents for the Landlord. I also note that the Tenants' rent cheques are made out to the Landlord which again supports the information in the written tenancy agreement.

I find based on the written tenancy agreement and testimony of the parties that the Tenants were required to pay \$2,490.00 in rent per month by the first day of each month for March to June pursuant to the tenancy agreement.

I find based on the testimony of the parties that the Tenants did not pay rent for March to June.

The Tenants did not point to any authority under the *Act* to withhold rent for March to June and therefore I find the Tenants did not have authority under the *Act* to withhold rent for these months.

I do not accept that the Tenants tried to pay rent in a method other than by cheque and the Landlord refused this. There is a receipt in evidence from October 15, 2020 which is signed by the Landlord and Tenants and states that the Tenants e-transferred \$2,490.00 to the Landlord. The receipt shows that the Landlord has accepted e-transfers in the past and tends to show that the Landlord would not have denied this form of payment. Further, I would expect to see written communications between the Tenants and Landlord about the Tenants asking to, or attempting to, pay rent in a method other than by cheque. The Tenants have not submitted such evidence.

In any event, whether the Tenants have tried to pay rent by a method other than cheque or not, the Tenants owe the Landlord \$9,960.00 in unpaid rent for March to June. I find the Landlord is entitled to recover this unpaid rent.

In relation to utilities, I accept that the Tenants are responsible for paying for all utilities as this is shown in the written tenancy agreement at term three of the addendum which states that the Tenants are responsible for payment of rent and utility bills. It is also shown at page two of the written tenancy agreement as no utilities are included in rent.

I do not accept that the Landlord's father told the Tenants they would only be responsible for hydro, gas, internet, cable and a phone because the parties disagreed about this, the Tenants have not provided documentary evidence to support this and the tenancy agreement supports the position of the Landlord.

I find the Tenants are responsible for paying for the utilities for the rental unit.

I accept the testimony of the Landlord that \$402.82 in utilities is currently outstanding. The Tenants did not dispute the amount of utilities sought. The Tenants only disputed that they owe for utilities. Further, the Landlord did submit some utility bills.

I accept that the Tenants have not paid this \$402.82 because the Tenants took the position that they do not owe for these utilities and did not submit that they had paid for them.

I do not accept that there is a leak in the rental unit such that the Tenants should not be responsible for the full amount of utilities owing. The parties disagreed about whether there is a leak in the rental unit. The Landlord submitted documentary evidence to support that he inspected the rental unit for a leak. I find it unlikely that the Landlord would allow a leak in the rental unit to continue given the rental unit is the Landlord's property and a leak could damage his property. There is insufficient documentary evidence before me to show that there is a leak in the rental unit.

In the circumstances, I am satisfied the Tenants owe the Landlord \$402.82 for utilities and find the Landlord is entitled to recover this amount.

### ***Recovery of the filing fee***

As the Landlord was partially successful in the Landlord's Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

### ***Summary***

In total, the Landlord is entitled to recover \$10,462.82 from the Tenants and is issued a Monetary Order in this amount.

### **Conclusion**

The Landlord is not entitled to an Order of Possession based on the 10 Day Notice.

The Landlord is entitled to recover \$10,462.82 from the Tenants and is issued a Monetary Order in this amount. 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: July 05, 2021

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Residential Tenancy Branch