



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: MNU-DR, OPU-DR, FFL  
Tenant: CNR

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent and utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:19 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the tenant I order the tenant's application dismissed without liberty to reapply.

The landlord testified that he served the tenant with his evidence and application for dispute resolution via email on October 5, 2021. The serving email was entered into evidence. The landlord testified that the tenant provided the landlord, in writing, with an email address for service. The email service agreement signed by both parties was entered into evidence. The email address in the above agreement is the address used to serve the tenant.

Section 89 of the *Act* sets out the approved methods of service for applications for dispute resolution as follows:

- 89** (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a)by leaving a copy with the person;
  - (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
  - (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
  - (f)by any other means of service provided for in the regulations.

Section 43(2) of the Regulation to the Residential Tenancy Act states:

For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

Residential Tenancy Guideline #12 states:

To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

Pursuant to the email service agreement entered into evidence, I find that the tenant provided the landlord with authorization to serve via email. I find that the landlord served the tenant with the landlord's evidence and application for dispute resolution in accordance with section 89(1)(f) of the *Act*.

The landlord testified that the tenant moved out of the subject rental property at the end of September 2021. As this tenancy has ended, I dismiss the landlord's application for an Order of Possession for unpaid rent, without leave to reapply.

#### Preliminary Issue – Amendment

The tenant's application for dispute resolution did not include the landlord's last name. The landlord testified to the correct spelling of his last name. Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to include the landlord's last name.

The tenant's application for dispute resolution stated the shortened version of the tenant's first name. The tenancy agreement signed by the tenant and entered into evidence by the landlord provides the tenant's full first name. Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to state the full version of the tenant's first name.

#### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent and utilities, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on October 1, 2019 and ended at the end of September 2021. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. This was originally a fixed term tenancy agreement set to end on September 30, 2020. The tenant did not move out on September 30, 2020 and the tenancy continued on a month-to-month basis. A security deposit of \$900.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenant did not provide him with her forwarding address in writing.

The landlord testified that in mid September 2021 the tenant verbally informed him that she intended on moving out on October 1, 2021. The landlord testified that he verbally told the tenant that she needed to provide one month's notice and that the notice had to be in writing. The landlord testified that the tenant then texted him with her intention to move out. The landlord testified that after he received the tenant's notice to move out, he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on September 14, 2021. A witnessed proof of service document confirming same was entered into evidence. The effective date of the 10 Day Notice is September 15, 2021.

The landlord testified that the tenant moved out at the end of September 2021. The landlord testified that the tenant did not pay rent for September or October 2021 totalling \$3,600.00. The landlord testified that he is seeking a monetary award for \$3,600.00 for unpaid rent. The landlord testified that a new tenant was found for November 1, 2021.

The landlord testified that the tenant, pursuant to the tenancy agreement, is required to pay 35% of utilities including gas and electricity. The tenancy agreement states same. The landlord testified that he is seeking the following unpaid utilities:

Bill Type	Date Range	Bill Total	35% Owed
Gas	July 29, 2021 to August 27, 2021	\$41.36	\$14.48

Gas	March 30, 2021 to April 28, 2021	\$103.31	\$36.16
Gas	April 29, 2021 to May 29, 2021	\$68.62	\$24.01
Gas	May 30, 2021 to June 28, 2021	\$64.51	\$22.58
Gas	June 29, 2021 to July 28, 2021	\$13.28	\$4.65
Electricity	July 21, 2021 to September 20, 2021	\$327.15	\$114.50
Electricity	March 20, 2021 to May 19, 2021	\$340.91	\$119.32
Electricity	May 20, 2021 to July 20, 2021	\$312.77	\$109.47
<b>TOTAL</b>			<b>\$445.17</b>

The landlord testified that he is also seeking unpaid gas for August 27, 2021 to October 31, 2021. The landlord testified that he does not yet have the bill for the above period and calculated what is owed by using the daily rate from the previous bill. The landlord testified that using the daily rate calculated from the previous bill, the tenant owes \$31.88 for the gas bill from August 27, 2021 to October 31, 2021.

The landlord testified that he is also seeking unpaid electricity from September 21, 2021 to October 31, 2021. The landlord testified that he does not yet have the bill for the above period and calculated what is owed by using the daily rate from the previous bill. The landlord testified that using the daily rate calculated from the previous bill, the tenant owes \$75.77 for the electricity bill from September 21, 2021 to October 31, 2021.

The total claim for utilities is \$552.82.

The landlord entered into evidence the following electricity bills:

<b>Bill Type</b>	<b>Date Range</b>	<b>Bill Total</b>	<b>35% Owed</b>
Electricity	January 20, 2021 to March 19, 2021	\$267.93	\$93.78
Electricity	May 20, 2021 to July 20, 2021	\$312.77	\$109.47
Electricity	July 21, 2021 to September 20, 2021	\$327.15	\$114.50

The landlord entered into evidence the following gas bills:

<b>Bill Type</b>	<b>Date Range</b>	<b>Bill Total</b>	<b>35% Owed</b>
Gas	June 28, 2021 to July 28, 2021	\$13.28	\$4.65
Gas	July 29, 2021 to August 27, 2021	\$41.36	\$14.48

The landlord testified that he did not enter into evidence all of the outstanding utility bills owed by the tenant.

### Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,800.00 on the first day of each month. Based on the undisputed testimony of the landlord I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$1,800.00 for the month of September 2021.

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the landlord's undisputed testimony, I find that the tenant gave less than one month's written notice to end tenancy to the landlord, contrary to section 45(1) of the *Act*.

Residential Tenancy Policy Guideline #3 (PG #3) states:

In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

I find that the landlord is entitled to loss of rental income in the amount of \$1,800.00 for October 2021's rent, in accordance with PG #3 and section 45(1) of the *Act*.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Based on the tenancy agreement entered into evidence I find that the tenant was required to pay 35% of gas and electrical utilities. Based on the landlord's undisputed testimony, I find that the tenant did not pay the tenant's portion of utilities.

Policy Guideline 16 states that to be successful in a monetary claim for damages, the landlord must prove the value of the damage or loss suffered. I find that the landlord has not proved the value of the loss totalling \$552.82 in unpaid utilities as only five utility bills were entered into evidence. I decline to award the landlord compensation for utility bills that were not entered into evidence because the value of those losses were not proved.

Based on the gas bills entered into evidence, I find that the landlord is entitled to a monetary award in the amount of \$19.13 pursuant to the following calculation:

Bill Type	Date Range	Bill Total	35% Owed
Gas	June 28, 2021 to July 28, 2021	\$13.28	\$4.65
Gas	July 29, 2021 to August 27, 2021	\$41.36	\$14.48

<b>TOTAL</b>			<b>\$19.13</b>
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Based on the electricity bills entered into evidence, I find that the landlord is entitled to a monetary award in the amount of \$223.97:

<b>Bill Type</b>	<b>Date Range</b>	<b>Bill Total</b>	<b>35% Owed</b>
Electricity	May 20, 2021 to July 20, 2021	\$312.77	\$109.47
Electricity	July 21, 2021 to September 20, 2021	\$327.15	\$114.50
<b>Total</b>			<b>\$223.97</b>

I decline to award the landlord any utilities stemming from the January 20, 2021 to March 19, 2021 bill entered into evidence because the landlord did not seek any portion of that bill in this application for dispute resolution.

I decline to award the landlord the approximate value of utility bills not yet issued. I find that the loss, at this point in time for the following bills and date ranges is speculative, and not proven, because the bills are not yet available:

- Gas for August 27, 2021 to October 31, 2021.
- Electricity from September 21, 2021 to October 31, 2021.

The landlord's claim for the above gas and electrical bills is dismissed with leave to reapply once the value of the loss is known.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$900.00 in part satisfaction of their monetary claim.



Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$1,800.00
Loss of rental income	\$1,800.00
Unpaid electrical bills	\$223.97
Unpaid gas bills	\$19.13
Filing Fee	\$100.00
Less security deposit	-\$900.00
<b>TOTAL</b>	<b>\$3,043.10</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: November 01, 2021

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Residential Tenancy Branch