



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR, CNC (Tenant)  
OPU-DR, MNU-DR, FFL (Landlords)

### **Introduction**

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Tenant filed their application July 10, 2022. The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10 Day Notice”)
- To dispute a One Month Notice to End Tenancy for Cause (the “One Month Notice”)

The Landlords filed their application August 12, 2022. The Landlords sought the following:

- An Order of Possession based on the 10 Day Notice
- To recover unpaid rent, utilities and late fees
- To recover the filing fee

The Landlords appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlords provided affirmed testimony.

The Landlords advised that the Tenant moved out of the rental unit November 02, 2022. The Landlords did not seek an Order of Possession but continued to seek to recover unpaid rent, utilities, late fees and the filing fee.

## ***Service***

Both parties submitted evidence on their own application. I addressed service of the hearing package and evidence for the Landlords' application. The Landlords testified that the hearing package and evidence were sent to the rental unit August 31, 2022, by registered mail and Tracking Number 210 relates to this. The Landlords submitted documentary evidence of service. I looked Tracking Number 210 up on the Canada Post website which shows the package was delivered September 01, 2022.

Based on the undisputed testimony of the Landlords, documentary evidence and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence for the Landlords' application in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I find the Tenant received the package September 01, 2022. I find the Landlords complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

## ***Tenant's application***

Rule 7.3 of the Rules states:

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.

The Tenant did not appear at the hearing whereas the Landlords did appear and were prepared to address the applications. Given this, I dismiss the Tenant's application without leave to re-apply. I also note that the Tenant's application is no longer an issue given the Tenant has moved out of the rental unit.

### **Issues to be Decided**

1. Are the Landlords entitled to recover unpaid rent, utilities and late fees?
2. Are the Landlords entitled to recover the filing fee?

### **Background and Evidence**

A written tenancy agreement was submitted. The tenancy started September 06, 2021, and was for a fixed term ending February 28, 2023. Rent was \$2,400.00 per month due on the first day of each month. The Tenant paid a \$1,200.00 security deposit. The agreement had an addendum with terms about utilities and late rent payments.

The Landlords sought to keep the security deposit towards unpaid rent.

The Landlords testified as follows.

The Tenant owes the following rent:

- \$600.00 from May
- \$2,400.00 from June
- \$2,400.00 from July
- \$2,400.00 from August
- \$2,400.00 from September
- \$2,400.00 from October
- Total = \$12,600.00

The Tenant did not have authority under the *Act* to withhold this rent.

The Tenant owed for gas and electricity pursuant to the tenancy agreement. The Tenant owed for 50% of utilities pursuant to term 11 of the addendum. The Tenant owes the following for gas and electricity:

- \$67.00 for May
- \$37.00 for June
- \$22.61 for July
- \$29.61 for August
- \$34.47 for September

- \$30.00 for October
- \$166.00 for June
- \$83.56 for August
- \$84.00 for October
- Total = \$554.25

The Tenant paid rent late and therefore the Landlords are seeking the maximum amount of \$25.00 for each late payment from May to October pursuant to term 5 of the addendum.

The Landlords sought a substituted service order for any orders issued in this decision. The Landlords testified that the parties commonly communicated by email during the tenancy. The email address for the Tenant is on the front page of this decision. The Landlords relied on copies of e-transfers in evidence to show the Tenant used the email address as recently as July 2022.

The Landlords submitted documentary evidence to support their application.

### **Analysis**

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.

Term 3 of the tenancy agreement and term 11 of the addendum show the Tenant was required to pay for 50% of gas and electricity during the tenancy.

Term 5 of the addendum states that there will be a late fee for rent paid after the first day of each month.

Section 7 of the *Residential Tenancy Regulation* (the "*Regulation*") states:

7 (1) A landlord may charge any of the following non-refundable fees...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I accept the undisputed testimony of the Landlords and based on it, as well as the Landlords' documentary evidence, I find the following.

The Tenant was required to pay \$2,400.00 in rent per month by the first day of each month pursuant to the tenancy agreement. The Tenant failed to pay \$12,600.00 in rent during the tenancy. The Tenant did not have authority under the *Act* to withhold this rent. The Landlords are awarded \$12,600.00 for unpaid rent.

The Tenant was required to pay 50% of gas and electricity during the tenancy. The Tenant failed to pay \$554.25 in utilities during the tenancy. The Landlords are awarded \$554.25.

The Tenant was required to pay for late payment of rent pursuant to the addendum to the tenancy agreement. The Tenant did not pay full rent from May to October and therefore paid rent late for six months. Pursuant to the *Regulation*, the Landlords are awarded \$150.00 for late rent payments.

Given the Landlords have been successful in their application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant owes the Landlords \$13,404.25. The Landlords can keep the \$1,200.00 security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a Monetary Order for \$12,204.25 for the remaining amount pursuant to section 67 of the *Act*.

Pursuant to section 71(1) of the *Act*, I allow the Landlords to serve the Monetary Order issued on this file on the Tenant by email at the email address noted on the front page

of this decision. I accept the undisputed testimony of the Landlords that the email address was commonly used by the parties to communicate about this tenancy. The Landlords submitted documentary evidence showing the Tenant used this email address as recently as May 27, 2022. The Tenant used this email address on their own application. I am satisfied the Tenant will receive the Monetary Order if sent to the email address.

### **Conclusion**

The Landlords can keep the security deposit and are issued a Monetary Order for \$12,204.25. This Order must be served on the Tenant and, if the Tenant does 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: December 02, 2022

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Residential Tenancy Branch