

## DECISION

### **Dispute Codes:**

OPR

MN

FF

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Landlord’s application for an Order of Possession; a Monetary Order for unpaid utilities; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided prior to the Hearing. The Landlord gave affirmed testimony and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid utilities, and if so, in what amount?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

### **Background and Evidence**

The Landlord testified that he served the Tenant with the Notice to End Tenancy on June 12, 2009, by posting the Notice to the Tenant’s door.

The Landlord was not certain of the date he served the Tenant with the Notice of Hearing package, but stated that he personally served the Tenant on the Monday or Tuesday after he filed his Application for Dispute Resolution.

The Landlord testified that there is a written tenancy agreement, which stipulates that the Tenant is to pay 30% of the utilities to the Landlord, who resides in the upper floor of the rental property.

The Landlord stated that the Tenant has not paid the outstanding utilities, which amount to \$685.04 effective June 2009.

### **Analysis**

The Tenant did not attend the Hearing. The Landlord was vague with respect to the date of service of the Notice of Hearing documents upon the Tenant. The Landlord has not proven service of the Notice of Hearing documents upon the Tenant.

The Notice to End Tenancy discloses that the Tenant was provided with written notice of the utility arrears on August 14, **2008**, in the amount of **\$184.08**. The Landlord did not provide a copy of the written demand for payment of the outstanding utilities into evidence. The Landlord did provide a copy of a letter dated January 14, 2009, which states "We have never received 30% of the utility required by the contract and the fee for the extended cable channels which you requested to add and promised to pay. Please know these fees will be deducted from the deposit."

The Landlord's Application for Dispute Resolution requests a Monetary Order in the amount of **\$685.04** for unpaid utilities. The Landlord has not proven that he provided the Tenant with written demand to pay the utilities for this amount 30 days prior to issuing the Notice to End Tenancy.

For the reasons provided above, I dismiss the Landlord's claim in its entirety.

### **Conclusion**

The Landlord's application is dismissed. If the Landlord wishes to pursue his claim for an Order of Possession and a Monetary Order for unpaid utilities, he will have to reissue a new Notice to End Tenancy, in accordance with the provisions of the Act.

The Notice to End Tenancy is cancelled. The tenancy remains in full force and effect.

Dated: August 26, 2009.

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