



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the landlords to obtain an Order of Possession for unpaid rent and utilities, A Monetary Order to recover unpaid rent and utilities, an Order to keep the security deposit, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenant on February 11, 2011.

Both parties and their witnesses appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession based on the Notice to End Tenancy?
- Are the landlords entitled to a Monetary Order to recover unpaid rent and utilities?
- Are the landlords entitled to keep the security deposit?

### Preliminary Issues

This unit is designated as a live/work unit and is covered by the City Bylaws. The Bylaws state that the tenant must operate a commercial business from the property in order to comply with the Bylaws. There was a question raised concerning my jurisdiction in this matter. I have

determined that I do have jurisdiction on the grounds that the tenant did not operate a commercial business from the unit and had not applied for a business licence in order to operate a business from the unit. One of the landlord's witnesses from the City Bylaw office gave affirmed testimony concerning the use of the unit by the tenant. Therefore, I have determined that the unit was used during the tenancy as a primary residential unit for the tenant and as such is covered under the Residential Tenancy Act. The hearing proceeded today in accordance with the provisions of this Act.

### Background and Evidence

Both Parties agree that this tenancy started on November 15, 2010. Rent for this unit is \$885.00 per month and is due on the 15<sup>th</sup> day of each month. The tenant paid a security deposit of \$442.50 on November 15, 2010. A Residential Tenancy Agreement is in place and has been signed by both Parties in November, 2010.

The landlords testify that the tenant owes a balance of rent for December, 2010 of \$35.00 and did not pay his rent for January, 2011 on the day it was due. The landlords' served the tenant with a 10 Day Notice to End Tenancy in person on January 23, 2011. This notice states the tenant has five days to pay the outstanding rent, or apply to cancel the Notice or the tenancy will end on January 20, 2011. This Notice also states that rent is owed of \$920.00 for December, 2010 and January, 2011 plus utilities of an undetermined amount.

The landlords testify that the tenant paid \$570.00 towards his rent arrears on or about January 30, 2011 and this has been accepted for use and occupancy only as it was paid after the five days allowed on the Notice to End Tenancy. The landlord states since that time the tenant has failed to pay rent for February, 2011 of \$885.00 and the total amount of outstanding rent is now \$1,235.00.

The landlords testify that the tenant did not pay his utilities of \$447.83 when the bill came in on January 19, 2011 (utility bill in the tenants name provided in evidence) the tenant did make a payment of \$220.00 towards this utility bill and now owes the sum of \$246.58. The landlords also state that another bill will be due for \$245.00 but they have not provided this in evidence at this time.

The landlords seek an Order of Possession to take effect as soon as possible. The landlords also request that they keep the tenants security deposit to offset against the unpaid rent.

The tenant disputes that he owes a balance of rent for December and states he had an agreement with the landlord to put some locks on in the property in lieu of rent. The tenant does not dispute that he owes rent for January and February and states the landlords did not provide him with a mail box so he could not get his mail or his cheques to enable him to pay his rent on time. The tenant testifies that the landlords did not provide him with a telephone line and because of this he could not operate his business from the unit.

The tenant gave other evidence that was not pertinent to the landlords' application or my decision. I looked at the evidence that was pertinent and based my decision on this.

The tenant states when he got his utility bill he thought it was too high for the consumption for his unit. He states he paid part of the bill and then contacted the City who sent an inspector to the unit to inspect the electrical systems. The tenant states the inspector found something strange with the power to the unit as when the power was turned off a light remained on in the unit. The tenant states he was told he was also paying for power from another unit and that is why his bill was so high.

The tenants witness is the city inspector who states when he inspected the unit the power was turned off to the unit but the bathroom light remained on. This indicates crossed loads between the two units and the light must be coming from another source. He states this would present a safety hazard. He states that the BC Safety Authority has been informed and they will investigate this issue. He states the affidavit submitted by the electrician who did the work is in error as there is an obvious problem with the power in the unit. The inspector confirms that although the tenant has a commercial meter he is not being billed a commercial rate.

The witness states there is a safety issue in the unit because if any work was carried out on the electrical system and the power needed to be turned off there is still power going into the unit from another source and anyone working on the power could get hurt.

The landlords testify that they hired an electrical company to do the work in the unit and to put the meter in. The landlords testify that they did not have an agreement with the tenant for him to do any work in the unit in lieu of rent and state the unit had been inspected by the city prior to the tenancy commencing and it was passed as fit for occupation.

The landlords' second witness confirms the landlords testimony that the tenant owes rent and that he was given the Notice to End Tenancy.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. A tenant must pay rent on the day it is due under the tenancy agreement pursuant to s. 26 of the *Act*. The tenant has presented no evidence to show that an agreement was in place for him to do work to the locks in lieu of rent. Therefore, I find that the landlords are entitled to recover rent arrears for December, 2010 of \$35.00, for January, 2011 of \$315.00 and for February, 2011 of \$885.00 pursuant to s.67 of the *Act*. Therefore, the amount of outstanding rent is now **\$1,235.00** and the landlord is entitled to recover this from the tenant pursuant to s. 67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$442.50** in partial payment of the rent arrears.

With regard to the landlords claim for unpaid utilities, I am not satisfied that the power to the unit is as it should be. The testimony of the city inspector concerning issues with the power going into the unit has thrown some doubt on the amounts of the tenants' utility bills. Consequently, at this time I am not prepared to make a finding in favor of the landlords claim for unpaid utilities until such a time as the electrical system is checked again by the City and a decision is made by them concerning the wiring and power into the unit. The landlords are at liberty to re-apply once the electrical systems have been inspected again by the appropriate authorities although the bill for the tenants unit is in the tenants name and the landlords must also determine if they are responsible for this cost if the tenant does not pay his bill.

As the landlords have been partially successful in this matter, they are entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a monetary order for the balance owing as follows:

Outstanding rent for December, 2010 and January, February, 2011	\$1,235.00
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$842.50</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

Based on the foregoing, I find that as the tenant did not pay the outstanding rent within five days of receiving the Notice to End Tenancy or file an application to dispute the Notice he is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$877.50**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme 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: February 18, 2011.

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Residential Tenancy Branch