



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, CNR, MNSD, FF

### Introduction

This hearing was convened in response to applications by the tenants and the landlord.

The tenants' application is seeking orders as follows:

1. Cancel the ten day notice to end tenancy for unpaid utilities.

The landlord's application is seeking orders as follows:

1. For an order of possession for unpaid utilities;
2. A monetary order for unpaid utilities; and
3. To keep all or part of the security deposit.

Both parties appeared gave affirmed testimony and were provided the opportunity to present their evidence and make submission to me.

### Issue(s) to be Decided

Should the notice to cancel tenancy be cancelled?

Is the landlord entitled to a monetary for unpaid utilities?

Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

The parties signed a tenancy agreement on October 1, 2011 and tenancy began on October 1, 2011. Rent in the amount of \$1,795.00 is payable on the first of each month.

The landlord testified that on September 23, 2011, he had the oil tank filled at the rental property and he received the bill from the oil company after the tenancy agreement was signed.

The landlord further testified that he presented the oil bill in the amount of \$623. 47 to the tenants on October 11, 2011 and the tenants have failed to pay the oil bill within 30 days as set out in clause #11 of the tenancy agreement.

The landlord further testified that tenants were served with a ten day notice to end tenancy for unpaid utilities on November 16, 2011.

The tenant testified that they are not required to a pay bill that was prior to them signing the tenancy agreement, and they had not used any oil when the landlord gave them the bill on October 11, 2011.

The tenant further testified that their tenancy agreement is month to month and they may never use the amount of oil the landlord is charging them for and they don't feel they are required to pay for future oil that may or may not be consumed.

I asked the landlord if he disclosed to the tenants that he was expecting them to pay this oil bill when he entered into the tenancy agreement on October 1, 2011. The landlord testified that did not discuss the oil bill with the tenant and is relying on clause #11 of the tenancy agreement. The landlord further testified that if the tenants do not use all the oil that he billed them for, the he would return the balance of the money to the tenant at the end of tenancy.

### Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

The landlord is relying on term #11 of the tenancy agreement. A copy of term #11 was not submitted into evidence by the landlord.

Under the Act where a term of tenancy requires the tenant to pay utility charges to the landlord and if those utility charges remain unpaid for 30 days after the tenant is given written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under section 46 of the Act. However, this only applies to utilities which have been used. The intent of the legislation does not require to pay for oil that may or may not be used in the future.

As an example, if the oil tank was full on October 1, 2011 and the landlord had the tank refilled on December 1, 2011, and provided the tenants with a bill for oil used, I would find those are utility charges used by the tenants and Section 46 of the Act would apply.

The intent of the legislation is that if the tenant used utilities and the landlord gives them a bill for such utility charges the tenant is obligated to pay under the tenancy agreement.

I find that in this case it would be unconscionable to have the tenants pay an oil bill for \$623.47 when they have only been in the rental unit for eleven days and the oil was supplied prior to entering into a tenancy agreement with the landlord. The tenants were not informed by the landlord that they would be required to pay this bill in advance. The tenants were fully expecting to pay the utility bill when such services were used.

If the tenancy agreement indicates the tenant is to pay for the oil, then the tenant must leave the oil tank in the condition that he or she found it at the start of tenancy, or pay for the oil used.

In light of the above findings, I dismiss the landlord's application and I grant the tenant's application to cancel the notice to end tenancy issued November 16, 2011, and the tenancy continues until ended in accordance with the Act.

Given the tenants were successful in their application I award the filing fee to the tenants. The tenants are authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award.

### Conclusion

I dismiss the landlord's application.

I grant the tenant's application and cancel the notice to end tenancy. The tenants are not required to pay for oil in advance of use.

The tenants are authorized to deduct \$50.00 for a from a subsequent month's rent in satisfaction of this award.

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: December 05, 2011.

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Residential Tenancy Branch