



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE  
OPR, MNR, FF

### Introduction

This hearing dealt cross applications by the landlord and tenant. The application by the tenant to cancel a notice to end tenancy for unpaid rent and to suspend conditions on the landlord's right to enter. The application by the landlord is for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee.

The landlord participated in the conference call hearing but the tenants did not. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing by registered mail. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

The landlord testified that one of the tenants named in this application vacated the rental unit at the end of October 2011 without providing the landlord with proper notice and is responsible for the unpaid rent and damages to the rental unit. The landlord stated that December 2011 rent in the amount of \$700.00 was unpaid and also stated that November and December 2011 rent was unpaid. The landlord stated that the second tenant remains in the rental unit and has been paying the rent.

The landlord acknowledged that the tenants had been served a 10 day notice to end tenancy for \$400.00 in unpaid rent and this notice is dated December 28, 2011 with an effective end of tenancy date of December 10, 2011.

The landlord stated that there are 3 units on the property and when the December 2011 utility bill arrived it was very high. The landlord stated that he went to the all the tenants and told them that they would have to contribute to the hydro bill because it was costing

him money. The landlord stated that there is not a tenancy agreement in place for this tenancy and that he has nothing in writing which states the tenants are responsible for any portion of the utilities.

The landlord stated that he had not yet completed any repairs in the rental unit and that one of the tenants named in this application was responsible for a toilet being broken, blinds broken, washer and dryer broken and a mess left behind by the tenants dogs. The landlord did not provide any additional information as to how he knew that one particular tenant was responsible for the damages.

### Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order for damages, unpaid rent, money owed or compensation due to damage or loss or the security deposit.

The landlord's testimony regarding the amount of unpaid rent owed, for which months the rent was owed (November and December or just December), the landlord's 10 day notice for unpaid rent which specifies \$400.00 rent owed and which tenant in fact owes unpaid rent is so inconsistent and conflicting that it is not reasonable to determine what portion of the rent remains unpaid or by which tenant. Therefore this portion of the landlord's claim is therefore dismissed without leave to reapply.

In relation to the landlord's claim for unpaid utilities, the landlord testified to the fact that there are no written tenancy agreements in place and nothing in writing that specifies that the tenants are responsible for paying the utilities. When a landlord receives a high utility bill they may not simply go to the tenants and make a demand for payment. Therefore this portion of the landlord's claim is therefore dismissed without leave to reapply.

In relation to the landlord's claim for damages, the landlord has not yet incurred any costs associated with this portion of the claim and it is therefore dismissed with leave to reapply.

There is also a concern regarding service of the December 2011, 10 day notice as one of the tenants had vacated the rental property October 31, 2011. And although the landlord served the documents for this hearing on the tenant by registered mail, the landlord had been contacted by the tenant and provided their forwarding address yet used the tenants old address for service.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

As the tenant did not attend the tenant's application is dismissed with leave to reapply.

Conclusion

The landlord is at liberty to reapply for costs associated with damage to the rental unit.

The balance of the landlord's claim is dismissed without leave to reapply.

The tenant's application is dismissed with leave to reapply.

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 29, 2012

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Residential Tenancy Branch