



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent and utilities and to recover the RTB filing fee.

The landlord attended the teleconference hearing and gave evidence. The tenant did not attend. The landlord gave evidence that he served the tenant with the Notice of a Dispute Resolution Hearing and the Landlord's Application for Dispute Resolution by registered mail on March 4, 2014. I find the tenant was properly served.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The current tenancy started September 1, 2013; the parties have had previous consecutive tenancy agreements for the same rental unit since July 2009. Under the current tenancy agreement, the tenant is obligated to pay \$1,450.00 rent monthly in advance on the first day of the month, and two-thirds of the electricity and gas costs for the house containing the rental unit.

The landlord gave evidence that the tenant rents the upstairs of a house and another tenant rents the downstairs. The landlord receives and pays the electricity and gas bills, then sends photocopies to the tenants to advise them of what they owe. The tenant in this application is responsible for two-thirds of the invoice amounts and the downstairs tenant is responsible for one-third of the invoice amounts.

The landlord gave evidence that there were no problems with the tenant's rent and utility payments until September 2012. In that month, the tenant's rent cheque was returned NSF. The landlord's evidence is that the tenant has been behind in her rent and utility payments since then.

The landlord provided an excerpt from his ledger for the rental unit from September 2012 until March 1, 2014 (the "Ledger"). The Ledger shows a running balance. The landlord added rent amounts owing to the Ledger on the first of each month and gas and electricity amounts owing as invoices were received. The landlord subtracted any payments received from the tenant from the running balance on the Ledger when those payments were received. Whenever one of the tenant's cheques was returned NSF, the landlord added the amount of the cheque back to the running balance on the Ledger on the date the cheque was returned.

The Ledger supports the landlord's evidence that the tenant has been behind in her rent and utility payments since September 2012. The Ledger indicates that the tenant was behind in her rent and utility payments by \$2,209.25 at the end of August 2013, immediately prior to the beginning of the current tenancy agreement.

The landlord gave evidence that he served the tenant with the Notice to End Tenancy for Unpaid Rent and Utilities (the "Notice") by posting the Notice on the tenant's door on February 1, 2014. The Notice states the tenant failed to pay \$4,300.00 rent that was due January 1, 2014 and \$1,386.70 in utilities following a written demand on January 1, 2014. The Notice specifies an effective date of February 11, 2014.

The total amount of rent and utilities that is specified as owing on the Notice is \$5,686.70 and this is equal to the stated amount owing on the Ledger at January 29, 2014.

The landlord gave evidence that the tenant made two payments following the Notice, a payment of \$1,000.00 received on February 20, 2014 and a payment of \$400.00 received on February 27, 2014.

The landlord gave evidence that he forgot to include a charge for a December 2013 rent cheque for \$1,450.00 that was returned NSF. He also gave evidence that the following amounts have come due since the Notice, and the tenant has made the following payments:

Total amount of Notice	\$ 5,686.70
Dec 2013 rent chq NSF	1,450.00
February 1, 2014 rent	1,450.00
Feb 20, 2014 payment	(1,000.00)
Feb 27, 2014 payment	(400.00)
March 1, 2014 rent	1,450.00
Feb 28, 2014 gas bill	168.04
April 1, 2014 rent	1,450.00
March 17, 2014 electricity	125.61
March 28, 2014 gas	<u>168.86</u>
Total now owing:	\$10,549.31

The landlord's evidence is that, at the date of the hearing, the tenant's outstanding total for rent and utilities is \$10,549.31.

### Analysis

I find the tenant received the Notice on February 4, 2014. Since the landlord's Ledger combines rent and utilities owing in one running balance, it is not apparent that the unpaid rent and unpaid utilities amounts showing on the Notice are accurate. However, the combined total of the unpaid rent and unpaid utilities amounts showing on the Notice is equal to the total amount owing on the landlord's Ledger at the date the Notice was served.

I find that the Notice, overall, represents the total amount the tenant owed the landlord for rent and utilities on the date the Notice was served.

I accept the landlord's evidence that the tenant did not make any payments within five days after receiving the Notice. I accept the landlord's evidence that the tenant made only two payments, on February 20 and 27, 2014, after she received the Notice.

According to Section 46(5), if a tenant does not pay the outstanding rent and utilities or make application for dispute resolution within five days of receiving the Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. For these reasons, I find that the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the landlord's evidence that the tenant continues to occupy the rental unit. For that reason, I find it is appropriate that I allow the landlord to amend his Application for Dispute Resolution to seek a monetary order for the revised amount owing for unpaid rent and utilities to the date of the hearing which is \$10,549.31. The landlord is also entitled to recover his RTB filing fee of \$50.00.

The total amount due the landlord is \$10,599.31. I order that the landlord retain the security deposit of \$725.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$9,874.31. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

I grant the landlord an order of possession and a monetary order for \$9,874.31. The landlord is also entitled to retain the security deposit.

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: April 14, 2014

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Residential Tenancy Branch

