



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

*CNR, FF.*

### **Introduction**

This was an application to deal with the tenant's application for an order to cancel the Ten-Day Notice to End Tenancy for rent, pursuant to Section 46.

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the evidence presented at the hearing, a decision has been reached.

### **Issues to be decided**

Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

### **Background and Evidence**

Based on the testimony of both parties, the background is as follows. The tenancy started on February 15, 2009 with rent set at \$1,600.00 and a security deposit of \$800.00 was paid. The tenancy agreement, which was not submitted into evidence by either party apparently contained a term stating that the tenant, would be responsible for paying for 60% of the utilities to the landlord within 15 days after being presented with the bill.

The parties both testified that IN 2009, the landlord did not request payment for utilities until the end of the year at which time a lump-sum was demanded for accumulated utility usage for all of the previous months. Both parties testified that the landlord did not present the actual invoice from the utility company at the time but had sent the tenant a letter showing the amount owed, which was \$1,300.00 as of December 31, 2009. The tenant's position was that this manner of administering the utility charges was unconscionable and had created the situation where the tenant suddenly fell into

substantial arrears due to the landlord's failure to issue utility invoices in a timely manner. The tenant felt that it would be expected that the billing for utilities be presented to the tenant as soon as the costs incurred..

Both parties testified that right after the lump-sum demand, a mutual agreement was reached between the parties for payment of the utility arrears by instalment. The tenant testified that \$300.00 of the debt was paid immediately and a cheque for \$400.00 dated June 15, 2010 was also given to the landlord. The tenant testified that when the June 15th cheque did not clear due to a paycheque delay which was not the tenant's fault, the landlord then issued a Notice to End Tenancy on June 16 with effective date of June 29, 2010. The tenant later paid the defaulted \$400.00 instalment that was due in June leaving \$600.00 still owed for 2009 utilities. The tenant testified that it was understood that the tenancy would continue and the payment by instalments would proceed.

The tenant testified that yesterday another cheque for \$400.00 as the next instalment for the utility arrears was given to the landlord and this would have reduced the debt to \$300.00. According to the landlord, this cheque was not honoured by the bank. The tenant did not deny this and testified that her pay was not deposited by her employer.

The tenant stated that, since the Ten-Day Notice was issued, arrears for rent in the amount of \$800.00 had also accrued in addition to the remaining utility bills owed for 2009. The landlord pointed out that more utility charges had accrued since December 2009 and the tenant had not paid anything towards these 2010 bills despite being presented with the invoices.

The tenant disputed the validity of the Ten-Day Notice to End Tenancy and hoped that the Notice would be found invalid so the tenancy could continue. The landlord felt that the Notice was justified and there was no reason not to enforce it.

### **Analysis:**

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent or utilities are in arrears. However, only if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant receives a written demand for payment of them, would a landlord be permitted to treat unpaid utility charges as unpaid rent and give notice on this basis. The landlord would have to prove that this term existed in a tenancy agreement. In this instance based on the testimony of both parties I accept that

a term in the agreement required the tenant to pay 60% of utilities.

In regards to the tenant's position that keeping utility bills until the end of the year was unconscionable, I find that for utilities in the landlord's name there is an implied term requiring that the landlord issue demands for payments, accompanied by copies of the actual invoice from the utility company, in a timely manner after the invoice has been received by the landlord . In this regard, I find that allowing bills to accrue for several months contributed to creating the arrears which caused undue hardship for the tenant.

That being said, I find that the landlord then agreed to a reasonable payment plan by permitting the tenant to pay amalgamated arrears in instalments over time. Although the tenant agreed to the plan, I find that it was the tenant who then subsequently defaulted on the payment agreement when the June 2010 instalment failed to clear. The fact that this occurred due to circumstances beyond the tenant's control is not a mitigating factor under the Act

Section 46 (6) which states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are **unpaid more than 30 days after the tenant is given a written demand for payment**, then the landlord may treat the unpaid utility charges as unpaid rent and may give notice under section 46.

I find that, although the actual invoices from the utility providers were not furnished as promptly as they should have been, the landlord gave the tenant a written demand for payment of utilities in December 2009 and this debt would be considered rent owed in thirty days, as of January 31, 2010. Section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complied with the Act. Moreover, I find that, despite the unconscionable billing method, the subsequent agreement between the parties overcame that issue because the tenant was granted reasonable time and permission to make partial payments by instalment. Once the tenant failed to honour the payment plan, I find that it was this action that resulted in the Ten-Day Notice for the total amount of arrears and ending the tenancy on the basis of unpaid rent.

Given the above, I find that the Ten Day Notice dated June 19, 2010 was supported under the Act and I must dismiss the Tenant's application to cancel the Notice.

## **Conclusion**

I hereby dismiss the tenant's application to cancel the Ten-Day Notice to End Tenancy for Unpaid Rent

During the hearing the Landlord made a request for an order of possession effective August 31, 2008. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have dismissed the tenant's application to cancel the Notice and upheld a Notice to End Tenancy. Accordingly, I so order. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Dated: August 2010

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Dispute Resolution Officer