



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, MNDC

### Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 8, 2010 and for compensation for damage or loss under the Act or tenancy agreement.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” The Tenant’s claim for compensation is for an overpayment for utilities (or rent), for painting and repairs to the rental property and for the loss of use of a dishwasher. I find that the latter two items are unrelated to the Tenant’s application to cancel a Notice to End Tenancy and as a result, those parts of the Tenant’s application are dismissed with leave to reapply.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Tenant entitled to be reimbursed for an overpayment of utilities?

### Background and Evidence

This tenancy started on November 1, 2009. Rent is \$1,500.00 per month plus utilities. The Tenant paid a security deposit of \$750.00 at the beginning of the tenancy. The Tenant rents the main level of the rental property as well as one of two suites on the basement level of the rental property.

The Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 8, 2010 by posting it to the rental unit door. The Parties agree that as of December 1, 2010, the Tenant had rent arrears of \$2,500.00. The Tenant made a payment of \$500.00 on December 20, 2010.

The Tenant said that he has been paying utilities for the whole of the rental property including the basement suite rented by another tenant. Consequently, the Tenant sought to recover an overpayment of utilities equal to 40% of the amount he paid in the



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previous 12 month period. The Landlord agreed that the Tenant should be credited with part of the utilities he paid but argued that he should be responsible for 75% of the utilities given the size of the property he rents in proportion to the whole.

## Analysis

During the hearing, the Parties agreed that the Tenant should be credited with 25% of the cost of the utilities (ie. gas and Hydro) that he has paid to October 2010 which amounts to \$478.55. Consequently, I find that the Tenant has made an overpayment for utilities of \$478.55. The Tenant acknowledged that even if this overpayment is deducted from the outstanding rent, \$1,521.45 still remains owing.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or if he believes the amount is not owed, apply for dispute resolution to dispute the Notice. Although the Tenant applied for Dispute Resolution within 5 days of receiving the 10 Day Notice dated December 8, 2010, I find that there are no grounds for his application to cancel the Notice because I find that there is outstanding rent. Consequently, the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 8, 2010 is dismissed without leave to reapply. The Landlord did not request any Orders at the hearing.

## Conclusion

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 8, 2010 is dismissed without leave to reapply. The Tenant's application for compensation for painting and repairs to the rental property and for the loss of use of a dishwasher is dismissed with leave to reapply.

A Monetary Order in the amount of **\$478.55** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 05, 2011.

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Residential Tenancy Branch