



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **INTERIM DECISION**

### Dispute Codes:

OPR, CNR, MT, MNR, MND, MNDC, FF

### Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for damages to the rental unit, a monetary Order for money owed or compensation for money owed or damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent or Utilities, for more time to apply to cancel a Notice to End Tenancy, for a monetary Order for money owed or compensation for money owed or damage or loss, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing on January 17, 2011. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. There was insufficient time to conclude the hearing on January 17, 2011 so the matter was adjourned to a later date.

The Tenant advised that his name was spelled incorrectly on the Landlord's Application for Dispute Resolution. He did not oppose the Landlord's application to amend the spelling of the Tenant's first name and the Landlord's Application for Dispute Resolution was amended accordingly.

This interim decision is being rendered to determine the merits of the Notice to End Tenancy that was served in relation to this tenancy.

### Issue(s) to be Decided

The issues to be decided in this interim decision are whether the Notice to End Tenancy for Unpaid Rent or Utilities should be set aside; whether the Landlord is entitled to an Order of Possession on the basis of the Notice to End Tenancy for Unpaid Rent or

Utilities; and whether the Tenant should be granted more time to apply to cancel a Notice to End Tenancy.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 15, 2009; that the parties entered into a written tenancy agreement; that the Tenant was required to pay monthly rent of \$1,600.00; and that the Tenant was required to pay water and hydro costs incurred at this rental unit throughout the tenancy. The parties agree that the Corporation of Saanich has mailed the water bill directly to the Tenant during this tenancy and that there has been an understanding that he would pay the water bill directly to the Corporation of Saanich.

The female Landlord stated that they have been advised by the Corporation of Saanich that the water bill is in arrears and that if it is not paid by December 31, 2010 the outstanding debt will be transferred to their property taxes. She stated that the Landlord paid the outstanding water bill, in the amount of \$414.30, to the Corporation of Saanich on December 31, 2010.

The Tenant acknowledged that he has not paid any of the water bills that were sent to him since December of 2009. He stated that he did receive a bill that shows he currently owes \$414.30 to the Corporation of Saanich.

The Landlord and the Tenant agree that the Landlord provided the Tenant with a letter, dated November 14, 2010, in which the Landlord directed the Tenant to pay their water bill by November 30, 2010. The male Landlord stated that he is certain that he personally served this letter to the Tenant on November 15, 2010. The Tenant stated that he located this letter in his mail box on November 15, 2010 or November 16, 2010. The letter does not declare the amount that was due on the date the letter was written however the Tenant acknowledged that he was aware that there were outstanding water bills prior to receiving this letter.

The Landlord and the Tenant agree that the Landlord personally served the Tenant with a Notice to End Tenancy for Unpaid Rent or Utilities on December 15, 2010. The Notice declared that the Tenant owed \$414.30 in utilities.

The Tenant filed an Application for Dispute Resolution disputing the Notice to End Tenancy on December 21, 2010. He has applied for more time to cancel a Notice to End Tenancy. In support of this application for more time he stated that he was not able to dispute the Notice to End Tenancy within five days of receiving it because he did not know where the Residential Tenancy Branch was located and because he was working on December 16, 2010, December 17, 2010, and December 20, 2010 and could not file an Application for Dispute Resolution.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant was required to pay monthly rent of \$1,600.00 plus water and hydro costs incurred at this rental unit throughout this tenancy.

Section 46(6) of the *Act* stipulates that if a tenancy agreement requires the tenant to pay utility charges and the utility charges are unpaid more than thirty 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 to end the tenancy pursuant to section 46 of the *Act*.

I find the male Landlord's testimony that he personally served the Tenant with a letter demanding payment of the water bill on November 15, 2010 to be more compelling than the Tenant's testimony that he located the letter in his mail box on November 15, 2010 or November 16, 2010, as the Landlord seemed far more certain of his actions in this regard. I therefore find that the Landlord provide the Tenant with a written demand to pay the water bill on November 15, 2010.

Based on the Tenant's acknowledgement that he has not yet paid any water bills from 2010, I find that the Tenant did not pay the water bill within thirty days of receiving the demand letter. I therefore find that the Landlord is entitled to treat any unpaid water bills as unpaid rent, pursuant to section 46(6) of the *Act*.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. On the basis of the undisputed evidence presented at the hearing, I find that the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that required the Tenant to vacate the rental unit by December 25, 2010, pursuant to section 46 of the *Act*.

Section 46(4) of the *Act* stipulates that a Tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or utilities or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me the evidence clearly shows that the Tenant has not paid the water charges that were outstanding on November 15, 2010 and he did not file an Application for Dispute Resolution to dispute the Notice by December 20, 2010.

The evidence shows that the Tenant filed an Application for Dispute Resolution disputing the Notice to End Tenancy on December 21, 2010, which is six days after he received the Notice to End Tenancy. Section 66(1) of the *Act* stipulates authorizes me to extend a time limit established by the *Act* only in exceptional circumstances. I find that the Tenant has provided insufficient evidence to show that there were exceptional circumstances that prevented him from filing his Application for Dispute Resolution within five days of receiving the Notice to End Tenancy.

In reaching this conclusion I find that not knowing where the Residential Tenancy Branch is located does not constitute exceptional circumstances, as this information is readily available via the internet or the telephone book. In reaching this conclusion I also find that not being able to take time off work does not constitute exceptional circumstances, as the Residential Tenancy Branch accepts online applications after business hours. As the Tenant has provided insufficient evidence to show that there were exceptional circumstances that prevented him from filing his Application for Dispute Resolution within five days of receiving it, I am denying his request for an extension of the time limit to submit an Application to Review.

Section 46(5) stipulates that if a tenant does not pay the outstanding rent or utilities or file an Application for Dispute Resolution to dispute the Notice within five days of receiving it, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and that the tenant must vacate the rental unit by that date. As the Tenant did not pay the outstanding rent or utilities or to file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice, I find that the the Tenant accepted that the tenancy has ended, pursuant to section 46(5) of the Act. On this basis I will grant the landlord an Order of Possession.

### Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

This interim 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 17, 2011.

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Residential Tenancy Branch