



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR MNDC OLC O

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for unpaid rent, as well as for monetary compensation and an order that the landlord comply with the Act. The landlord, the tenant and a witness for the tenant participated in the teleconference hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the notice to end tenancy valid?  
Is the tenant entitled to monetary compensation as claimed?  
Should the landlord be ordered to comply with the Act?

### Background and Evidence

The tenancy began on October 1, 2011. The monthly rent, payable in advance on the first day of the month, is \$750. The rental unit is a basement suite in a house. There is no written tenancy agreement. The upper portion of the house is occupied by other tenants under a separate tenancy agreement.

### *Notice to End Tenancy*

In early January 2012 the landlord served the tenant a notice to end tenancy for unpaid rent. The tenant stated that she received the notice on January 6, 2012 and paid all of her outstanding rent a couple of days after the 6<sup>th</sup>. The landlord stated that her husband served the tenant the notice on January 3, 2012, and the tenant paid all of the rent some time after that, but the landlord does not know when.

*Claim for Monetary Compensation*

The tenant stated that she has had no hot water or gas heat since the tenancy began. The landlord was supposed to provide gas for heat and hot water but has not done so. The tenant has been heating the rental unit with electric heaters and boiling water for baths.

The tenant understood that she was to share hydro with the upstairs tenants, and that she was to pay for 40 percent of the hydro costs for the house, after the landlord presented the tenant with hydro bills. The landlord did not present any hydro bills to the tenant. In December 2011 the hydro was cut off for four days, so the tenant had no electricity or heat. All of the food that was in the refrigerator was spoiled.

The upstairs tenant appeared as a witness and verified that the whole house has not had hot water or gas heat since the outset of her tenancy in August 2011.

The tenant has claimed monetary compensation of \$1900, or approximately \$20 per day for the lack of hot water and gas heat, as well as the stress of dealing with the landlord, since the outset of the tenancy.

The landlord's response was as follows. The hydro and gas are not included in the rent, and the tenant has to share those costs with the upstairs tenants. The landlord acknowledged that there are only one hydro meter and one gas meter for the house. The upstairs and downstairs tenants have had access to the heat and hot water for the entire time, the meter lock has been opened. The hydro and gas companies locked up the meter because the tenants did not put it in their name.

*Orders that the Landlord Comply with the Act*

The tenant sought orders that the landlord have the hydro and gas for the house put in the landlord's name, and that the tenant would pay 40 percent of the hydro once the landlord presented the tenant with the hydro bills.

The tenant also stated that the male landlord has been continually coming on to the rental property without notice. The tenant sought an order requiring the landlord to comply with the Act in regard to attending on the rental property.

The landlord's response was that the tenant was lying, that she was responsible for 50 percent of the hydro and gas, that she was supposed to get it put in her own name, and that the male landlord has not been attending on the rental property.

I note that throughout the hearing, the landlord provided confusing, contradictory testimony and did not directly answer my questions when asked. The landlord also temporarily disconnected from the hearing.

### Analysis

#### *Notice to End Tenancy*

I accept the tenant's testimony as more credible and consistent than that of the landlord. The male landlord did not provide testimony of service of the notice to end tenancy. The landlord agreed that the tenant paid the rent in full but could not say when. I therefore accept that the tenant received the notice on January 6, 2012 and paid the amount in full two days after receiving it. The notice to end tenancy is therefore not valid.

#### *Claim for Monetary Compensation and Orders that the Landlord Comply with the Act*

The landlord's testimony regarding the gas and hydro was extremely problematic and confusing. The landlord did agree that there are only one hydro meter and one gas meter for the house. The tenant did not have gas heat or hot water, but according to the landlord, the tenants (or perhaps the upstairs tenants) could have put the gas and hydro in their names.

When utilities are shared between more than one rental unit, particularly on only one meter, it is not reasonable for the landlord to require the tenants of one unit to have the utilities put in their name, or to require the tenant to make arrangements for the utilities in question to be separately metered. In these circumstances, the landlord must therefore put the utilities in their name, and then present the tenants with bills. Furthermore, if any utilities are not included in rent, that term ought to be outlined in a written tenancy agreement.

I accept the tenant's testimony that she is responsible for 40 percent of the hydro for the house. The landlord must have the hydro and gas put in the landlord's name, and then present the tenant with hydro bills. I also accept the testimony of the tenant that gas heat and hot water are included in her rent. The landlord therefore must provide gas heat and hot water, and must not separately charge the tenant for gas.

The tenant has claimed compensation of \$20 per day for no gas heat or hot water, as well as for stress. This amount represents 80 percent of the tenant's rent. I do not find this amount reasonable, as the tenant appeared to be willing to live with the situation

and did not mitigate her loss by applying for dispute resolution until after the hydro was cut off and the landlord served the tenant a notice to end tenancy for unpaid rent.

I do find, however, that the tenant is entitled to some monetary compensation for the landlord's failure to provide hot water or gas heat, and for causing the rental unit to go without electricity for four days, with the resulting loss of perishable groceries in the refrigerator. I find it reasonable to compensate the tenant a total of \$750 for her losses.

In regard to the tenant's claim that the landlord has been entering the rental property without notice, I note that under the Act, a tenant is entitled to quiet enjoyment of their rental unit, including reasonable privacy, and the landlord may only enter the rental unit after either receiving permission from the landlord or giving at least 24 hours' written notice of the landlord's intention to enter the rental unit for a reasonable purpose.

### Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

The tenant is entitled to monetary compensation of \$750, which she may deduct from her next month's rent.

The landlord is hereby ordered to immediately put the hydro and gas for the property in the landlord's name.

The tenant is responsible for 40 percent of the hydro, and the landlord must present the tenant with the hydro bills when seeking payment from the tenant.

Gas is included in the tenant's rent, and the landlord may not charge the tenant separately or additionally for gas.

The landlord is ordered to comply with sections 28 and 29 of the Act to provide the tenant quiet enjoyment of the rental unit, and not attend the rental unit without either obtaining the tenant's consent or giving proper written notice.

If the landlord fails to comply with these orders, it is open to the tenant to apply for further monetary compensation.

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 6, 2012.

---

Residential Tenancy Branch