



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on July 20, 2012. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

The tenant informed the Dispute Resolution Officer that she had made an inadvertent error on the address for the rental unit. The tenant states she put upper unit when it fact it should have been the lower unit. The tenant did not raise any objections to the address of the rental unit being changed and the address was been amended accordingly.

### Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?

### Background and Evidence

The tenant testifies that this tenancy started on December 01, 2010 for a fixed term tenancy which ended on May 01, 2012 and then reverted to a month to month tenancy. Rent for this unit is \$1,200.00. The tenant has provided a copy of the tenancy agreement which states the rent includes water, electricity and heat. The tenant was permitted to provide a copy of the addendum to the tenancy agreement during the hearing which states 'any charges that exceed \$250.00 per two month billing cycle (or \$125.00) per month will be deemed to have been excessive use by the tenant and the tenant will pay the difference within 48 hours of being produced a bona fide electricity bill'.

The tenant testifies that the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid utilities on July 19, 2012 although the landlord has appeared to have altered the date the Notice was issued to July 31, 2012. The Notice has an effective date of July 28, 2012 and the tenant testifies that she filed her application to dispute the Notice on July 19, 2012.

The tenant testifies that since the start of her tenancy she has been charged 50% of all the utility bills when her agreement clearly states otherwise. The tenant agrees she has not paid some of the latest bills but states she is unaware of the exact amount she owes to the landlord in light of the wording in the tenancy agreement and addendum. The tenant testifies that as the landlord has been charging the tenant 50 % of all the bills and the tenant does not even know if her unit uses gas then the tenant feels there is a strong possibility that she has overpaid on the utility bills through the period of her tenancy especially in light of the wording on the agreement which states heat and water and included in the rent and electricity up to \$250.00 per two month billing period

The tenant refers to the addendum in the tenancy agreement and states this addendum only refers to any excessive amounts of electricity and yet the tenant has been paying 50% of all utility bills. The tenant testifies that the landlord has been e-mailing the tenant a copy of some of the bills when the tenant asks for them and a breakdown of the tenants 50% share. However, the tenant has not received all copies of all the bills she has paid towards. The tenant states the landlord lives in the upper unit and the bills are shared between them. The tenant disputes the Notice on the grounds that the landlord has not complied with the tenancy agreement in place between the parties.

The tenant testifies that prior to receiving this 10 Day Notice she had given the landlord notice to end the tenancy on July 19, 2012 with an effective date of September 01, 2012. The tenant states she does intend to vacate the rental unit on that date.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the tenant. I have considered the tenants arguments in this matter and find the tenancy agreement does state that rent includes water, electricity and heat. The addendum states the tenant is responsible for any excessive electricity above \$250.00 in a two month billing period which is payable within 48 hours.

I refer the parties to s. 46(6) of the *Residential Tenancy Act (Act)* which states: 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 of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under s. 46 of the *Act*. However I am not satisfied at this time that the tenant does owe utilities as the landlord has been charging the tenant for 50% of the utilities for the duration of her tenancy and the tenancy agreement states that water and heat are included in the rent and the tenant is only liable for an amount in excess of \$250.00 for a billing period for electricity. This term could be unconscionable as the

landlord lives in the upper unit and any excessive amounts of electricity should not be the tenants sole responsibility.

Consequently, without seeing all utility bills and the amounts paid by the tenant I uphold the tenant's application on the grounds that it is likely the tenant has overpaid utilities for the period of her tenancy. Therefore it is also likely that the tenant does not owe an amount for utilities at this time as the landlord would be required to pay back to the tenant any amount paid over and above the amounts agreed on the tenancy agreement. The 10 Day Notice to End Tenancy is therefore cancelled.

I strongly suggest the landlord provides the tenant with all copies of utility bills for the period of her tenancy and revisits the terms of the tenancy agreement concerning heat, water and electricity.

### Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid utilities is cancelled and the tenancy will continue

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: August 15, 2012.

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Residential Tenancy Branch