



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC CNR

### Introduction

This hearing dealt with an application by the tenants for an order setting aside the landlord's 10 Day Notice to End Tenancy dated July 15, 2012 and the landlord's 1 Month Notice to End Tenancy dated August 9, 2012. At the hearing the landlord made a verbal request for an order of possession. Both parties attended the hearing and had an opportunity to be heard.

### Issue(s) to be Decided

Are the parties entitled to the requested orders?

### Background and Evidence

This tenancy began on February 15, 2012. The rental unit is the basement suite in a detached home. The main floor of the house is also occupied by tenants. The rent is \$650.00 per month plus 1/3 of utilities. The upstairs tenants were supposed to pay the other 2/3 of the utilities. There is no written tenancy agreement but a copy of the tenants' Shelter Information/Intent to Rent Form was submitted into evidence which confirmed the above rent and utility obligations. The tenants' rent was supposed to be paid directly to the landlord by the Ministry of Social Development. Apparently the payments were going through regularly without any problems until May 2012 when for no apparent reason the cheques stopped coming to the landlord. The landlord did not receive the rent when it was due for May, June or July 2012. The landlord spoke to the tenants about the situation and the tenants spoke to the Ministry. I understand from the testimony I heard that the tenants were then told that they had to provide proof that they were going to be evicted in order to get further rent payments. The tenants advised the landlord of this and the landlord then served the tenants with a 10 Day Notice to End Tenancy dated July 15, 2012. I understood from the testimony that the parties had agreed that the landlord would not move to enforce this Notice but rather that it would simply be used by the tenants to get their rent payments going again. Ultimately the rent payments were reinstated by the Ministry but not until July 10, 2012. As a result,

the tenants still owe the landlord rent for the months of May and June and the first ten days of July.

In addition to the above problem regarding rental payments, the tenants have not been paying their share of the house utility bills. The landlord claims that since the beginning of the tenancy the tenants have not paid any utilities despite being given copies of the monthly bills with the amount owed by the tenants indicated thereon. The landlord submitted copies of utility bills from BC Hydro and Fortis. Since October 2011 (when the current upstairs tenant moved in) the bills have been coming by e-mail to the upstairs tenant. The upstairs tenant then prints a copy of the bill, writes the 2/3 – 1/3 split on the bill and then gives a copy to the downstairs tenants. The upstairs tenant testified that these bills were regularly given to the downstairs tenants within 3 days of e-mail receipt and that they were always delivered well before the 20<sup>th</sup> of the month.

For their part, the downstairs tenants claim that they needed to have the bills by the 20<sup>th</sup> of each month in order to provide them to the Ministry for payment. The downstairs tenants also said that they wanted their own original e-mail claim that they did not trust the documents being provided by the upstairs tenant. Additionally, the downstairs tenants claim that they were doing work on the house for the landlord and that they were not required to pay the utilities.

In order to avoid the utilities being cut off the landlord has been making all of the utility payments that the downstairs tenants failed to make. The landlord denied that the tenants were permitted to not pay the bills for work done on the rental unit.

In addition to the issues of rent and utility payments, the landlord claims that the behaviour of the tenants has become extremely disruptive and frightening for the upstairs tenant. The landlord arranged for the upstairs tenant to be on the conference call so that I could hear the allegations “directly from horse’s mouth”. The upstairs tenant did testify to the increasingly aggressive behaviour of the male tenant towards her and the fact that the loud arguing and yelling that she regularly hears coming from the tenants’ suite has caused her stress and anxiety. The tenant expressed particular concern that much of the yelling is often directed at the tenants’ children and that on one occasion there was a physical altercation between two adult males in the unit which altercation resulted in police attendance at the rental unit. The upstairs tenant also testified that she has observed the male tenant engaging in drug deals outside the rental unit.

For their part, the tenants deny they yell at their children and the male tenant simply stated that he is “loud person” and that they are not always yelling. The tenants also pointed out that the police did not arrest anyone at the time of the physical altercation.

In any event, on August 9, 2012 the landlord served the tenants with a 1 Month Notice to End Tenancy. The Notice indicated that the tenants (a) were repeatedly late paying the rent; (b) have significantly interfered with or unreasonably disturbed another occupant; (c) seriously jeopardized the health or safety of another occupant; (d) engaged in illegal activity that has adversely affected the quiet enjoyment, etc. of another occupant; and (e) assigned or sublet the rental unit without the landlord's consent. The tenants disputed that Notice on August 14, 2012.

### Analysis

In the present case, although the application before me was made by the tenants, the burden of proof is on the landlord to prove the allegations contained in the Notices to End Tenancy.

I shall deal with each Notice in turn.

10 Day Notice to End Tenancy dated July 15, 2012 – According to both parties this 10 Day Notice was issued by the landlord at the request of the tenants for the purpose of restarting the tenants' government housing assistance. The tenants did not dispute the Notice and the result of this would normally be that the tenants would be conclusively presumed to have accepted the end of the tenancy. However, given the circumstances surrounding the issuance of the Notice I am not satisfied that it would be appropriate to make such a finding. Further, I note that the landlord has continued to accept rent from the tenants and has in my view reinstated the tenancy. The 10 Day Notice to End Tenancy dated July 15, 2012 is therefore cancelled.

1 Month Notice to End Tenancy dated August 9, 2012 – In the present case, the landlord indicated on the Notice that there were several reasons that the tenants were being given notice. However, it is not required under the Act that that landlord prove all the reasons given in the Notice. If I am satisfied that one of the allegations contained in the Notice is justified then the landlord becomes entitled to an order of possession.

One of the allegations made in the Notice is that the tenants are repeatedly late paying the rent. According to the landlord the tenants not only failed to pay the rent for May, June and part of July, they have repeatedly failed to make utility payments which, according to the landlord are due monthly. In other words, the landlord is making the argument that the failure to make the utility payments is the equivalent to failing to pay rent because it formed part of the tenancy agreement between them as the cost of the rental unit.

Under the Act, the word “rent” is defined as “money agreed to be paid by a tenant to a landlord in return for the right to possess a rental unit”. In the present case there was no written tenancy agreement but the tenants’ Shelter Information/Intent to Rent Form clearly indicated that the rent was \$650.00 plus 1/3 of the utilities.

I am satisfied that the tenants were aware of the amount of utilities owing and that monthly statements have been provided to them but that they simply refused to pay them. Accordingly, I am satisfied that the landlord has established that the tenant has been repeatedly late paying the rent which is comprised of \$650.00 per month plus 1/3 of the utilities.

It is not necessary for me to consider the balance of the landlord’s allegations as set forth in the Notice.

### Conclusion

I dismiss the tenants’ application.

I grant the landlord an order of possession effective two days from the date of service. This order may be filed in the Supreme 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*.