



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, MNDC, MNSD, FF  
CNR

### Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent or utilities / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security + pet damage deposits / and recovery of the filing fee; and ii) by the tenant for cancellation of a 10 day notice to end tenancy for unpaid rent or utilities.

Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute is located in the lower portion of a house. The landlords reside in the upper portion of the house. The landlords themselves are renters, and they sublet the lower portion of the house to the tenant.

Monthly rent of \$900.00 is due and payable in advance on the first day of each month. A security deposit of \$450.00 was collected, and a pet damage deposit of \$450.00 was also collected. Pursuant to a "Shared Utilities Agreement," the tenant is responsible for paying 30% of the monthly utilities billed to the house ("BC Hydro and Fortis BC").

Pursuant to a written tenancy agreement, the tenancy began on July 15, 2012. The initial term of tenancy is shown on the agreement as from July 15, 2012 to January 15, 2013. Thereafter, the ticked box on the template tenancy agreement provides that the tenancy "may continue on a month-to-month basis or another fixed length of time."

As to the box on the template agreement which provides that after the end of the fixed term the “tenancy ends and the tenant must move out of the residential unit,” it has not been ticked. Despite this, both parties have provided their initials in the respective boxes located adjacent to this box on the template tenancy agreement.

Indeed, after the end of the fixed term on January 15, 2013, no new written tenancy agreement was entered into, and the tenancy has continued on a month-to-month basis.

The landlords themselves entered into a fixed term tenancy with the owner / landlord of the house for the period from July 1, 2012 to June 31 [sic], 2013. Pursuant to that agreement the parties agreed that at the end of the fixed term the tenants (landlords in this dispute) “must move out of the residential unit.”

Pursuant to the agreement noted immediately above, the landlords in this dispute informed the tenant by letter dated March 31, 2013, that she herself “must vacate” the unit effective June 28, 2013. In response to the landlords’ letter, by letter dated April 30, 2013 the tenant informed the landlords of her conclusion that she was entitled to “the equivalent of one month’s rent payable under the tenancy agreement.” In her letter the tenant described herself as “currently unemployed,” and undertook to apply her perceived entitlement to the month of May, as opposed to the month of June 2013.

Subsequently, arising from rent which remained unpaid when due on May 1, 2013, the landlords issued a 10 day notice to end tenancy dated May 2, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is May 11, 2013. Following this, the tenant filed an application to dispute the notice on May 6, 2013. After service of the notice, the tenant has made no further payment toward rent or utilities for May, and she continues to reside in the unit.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

For information, the attention of the parties is drawn to section 44 of the Act which broadly addresses **How a tenancy ends**, and Residential Tenancy Policy Guideline #19 which addresses “Assignment and Sublet.”

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act speaks to **Landlord's notice: non-payment of rent**:

46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) 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 this section.

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated May 2, 2013. While the tenant disputed the notice within 5 days following her receipt of the notice, she did not pay any portion of the outstanding rent or utilities within 5 days of receiving the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlords have established entitlement to an **order of possession**.

Pursuant to section 63 of the Act which speaks to the **Opportunity to settle dispute**, the parties reached an agreement as follows:

#### **RECORD OF SETTLEMENT**

- that the landlords will undertake to put the tenant in direct contact with the owner of the property and / or the owner's agent, with a view to enabling those parties to discuss a potential continuation of the tenancy;
- that in consideration of the above, the landlords will exercise discretion in relation to whether and / or when the order of possession is served on the tenant;
- that pending an opportunity to review and discuss the utility bills, for the present time the amount of utilities outstanding for May is agreed to be \$122.20.

Following from all the above, I find that the landlords have established entitlement to a claim of **\$1,072.20**, as follows:

\$900.00: *unpaid rent for May*

\$122.20: *a portion of the unpaid utilities for May*

\$50.00: *filing fee*

I order that the landlords retain the combined security and pet damage deposits in the total amount of **\$900.00** (\$450.00 + \$450.00), and I grant the landlords a **monetary order** under section 67 of the Act for the balance owed of **\$172.20** (\$1,072.20 - \$900.00).

I find that the landlords' claim for unpaid rent for June is premature, and that aspect of the application is therefore dismissed with leave to reapply.

### Conclusion

I hereby issue an **order of possession** in favour of the landlords effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$172.20**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court 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: May 31, 2013

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Residential Tenancy Branch

