



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR, DRI, OLC, ERP, PSF, LRE, RR

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end this tenancy due to unpaid rent and unpaid utilities dated September 07, 2013. As well, the tenant applies to dispute an additional rent increase, for the landlord to comply with the Act, for the landlord to make emergency repairs, for the landlord to provide services required by law, to suspend the landlord's right to enter the rental unit, and to allow the tenant to reduce rent for repairs.

Both parties participated in the conference call hearing and were provided opportunity to present evidence and discuss their dispute with a view to resolving it. Each party acknowledged receiving the evidence of the other. At the outset of the hearing the landlord orally requested an Order of Possession should I uphold the notice to end the tenancy or dismiss the tenant's application. The style of cause is amended to reflect the proper address for the tenant.

### **Issues to be Decided**

Is the 10 Day Notice to End Tenancy for unpaid rent or utilities effective to end this tenancy?

Has the landlord imposed an illegal rent increase?

Should the landlord be ordered to comply with the Act?

Should the landlord be ordered to make emergency repairs?

Should the landlord be ordered to provide services or facilities required by law?

Should the landlord's right to enter the rental unit be made conditional?

Should the tenant be allowed to reduce the rent for repairs, services or facilities not provided?

### **Background and Evidence**

The relevant evidence in this matter is as follows. The tenancy began March 2012. The tenancy agreement stipulates the payable rent each month is \$1300.00 payable in advance on the first day of each month, plus the cost of utilities. On September 07,

2013 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent and utilities for unpaid rent of \$120.00 and unpaid utilities of \$2500.00. The tenant disputed the landlord's Notice claiming the landlord had orally agreed to a reduction of rent, and, they had to expend funds to make emergency electrical repairs for which they provided a receipt. The landlord denies they agreed to a reduction of rent in any form.

None the less, the tenant acknowledged they owe the landlord \$2500.00 for unpaid utilities. The landlord provided a document signed by the tenant and the landlord dated June 04, 2013 which states the tenant *verifies* they owe the landlord \$3500.00 for utilities accumulated since the outset of the tenancy in 2012. The tenant subsequently paid \$1000.00 to the landlord. The landlord provided a demand letter addressed to the tenant dated August 07, 2013, requesting immediate payment of the balance of the utilities arrears, which the tenant acknowledged they have not paid.

The tenant did not advance evidence of an additional rent increase. The tenant did not advance evidence they have notified the landlord of the need for emergency repairs. The tenant did not advance evidence of what services or facilities required by law not being provided by the landlord. The tenant testified that the landlord does not always provide notice to access the rental unit when they need to access the electrical panel within the unit. The landlord claims they were not aware one of their agents was doing so and stated they will ensure the tenant will be provided with proper notice under the Act from here on.

### **Analysis**

**Section 46** of the Residential Tenancy Act (the Act), in part, states as follows:

**46 (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.

On preponderance of the relevant evidence in this matter, I find that when a landlord alleges that a tenant have not paid rent or utilities and issues a Notice to End for the Unpaid rent or utilities, the tenant bears the burden of proving that rent or utilities have been paid. In respect to utilities, if the landlord has followed that which is prescribed by Section 46(6) of the Act and the utilities remain unpaid after 30 days the tenant is given a written demand for payment, I find that the landlord may treat the unpaid utility charges as unpaid rent and may give the tenant a Notice for Unpaid Rent or Utilities under Section 46. In this matter, the evidence is clear that the tenant owes utilities in the amount of \$2500.00, and that the landlord gave the tenant the prescribed written

demand for payment, and the tenant did not satisfy the utilities debt within the required 30 days to do so.

As a result of all the above, I uphold the landlord's Notice and find the landlord is entitled to an **Order of Possession**. **I Order** that the tenancy will end in accordance with the Order. The tenant's application to have that notice set aside **is dismissed**. I make no finding in respect to the specific claim of unpaid *rent*.

In respect to the balance of the tenant's application, I find that they have not provided evidence to support their claims for emergency repairs, or their claim of an absence of services or facilities required by law, nor sufficient evidence that the landlord's right to enter the rental unit should be made conditional. I am satisfied that until the end of the tenancy the landlord will comply with all requirements of the Act in relation to lawful access to the rental unit. Effectively, **I dismiss** the balance of the tenant's claims, without leave to reapply.

It is available to the landlord to seek dispute resolution in respect to any monetary claims.

### **Conclusion**

The tenants' application **is dismissed**, in its entirety.

**I grant** an Order of Possession to the landlord **effective 2 days** from the day they serve the Order on the tenant. If the landlord wants to end the tenancy the tenant **must** be served with this **Order of Possession**. 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.

**This Decision is final and binding on both parties.**

*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: September 18, 2013

---

Residential Tenancy Branch

