



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with two related applications. The landlord's application was for an order of possession, a monetary order and an order permitting retention of the security deposit in full or partial satisfaction of the claim. The tenant's application was for an order setting aside a 10 Notice to End Tenancy for Unpaid Rent or Utilities. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

- Does the tenant owe any rent or utilities and, if so, in what amount?
- Is the landlord entitled to an order of possession and, if so, on what terms?
- What order should be made with respect to the filing fee paid by the landlord?
- What order should be made with respect to the security deposit?

### Background and Evidence

This month-to-month tenancy commenced mid-September 2012. At that time the tenant was named on the written tenancy agreement as a co-tenant with one other person. Eventually the other tenant moved out of the rental unit and the landlord and tenant signed a new written tenancy agreement on January 19, 2013. Although a copy of the first agreement was not filed in evidence both parties testified that except for the names the second agreement was identical to the first.

The agreement provided for payment of a monthly rental of \$1200.00, due on the first day of the month. The tenant paid a security deposit of \$600.00.

The addendum to the tenancy agreement contained the following clause:

"1. 2/3 of the B.C. Hydro bill will be paid by the tenant on the due date of each month on time, so not to receive a service charge. If not then the tenants agree to pay the difference."

The tenant acknowledged that the signature on the tenancy agreement and the addendum (copies of which he filed as part of his evidence) was his.

There is no dispute that in 2013 the tenant paid \$162.50 every month for the hydro. The landlord's evidence is that the equalized payment in that year was \$254.00 and that when she calculated the 2/3 share of that amount she made a mistake and only asked the tenant for \$162.50 for the hydro, instead of the \$169.33 that was actually 2/3 of the equalized payment.

The tenant's position is that the agreement is that he would pay \$162.50 per month for hydro, nothing more.

In 2013 the landlord had been provided with two separate cheques for every month. One dated for the first in the amount of \$1200.00 and one dated for the 22<sup>nd</sup> of every month in the amount of \$162.50.

Before January 1, 2014 the tenant gave the landlord a series of post-dated cheques, each in the amount of \$1362.50 for rent and hydro.

The first hydro bill for January, dated January 10, 2014, included the annual adjustment for the previous year. Instead of the credit the parties were expecting, there was an amount due of \$824.01. In addition, the bill stated that "With your next bill, your monthly installment changes to \$300.00 . . .".

On January 21 the landlord send the tenant the following text:

"I received the annual adjustment for the hydro bill this month which shows there is an outstanding amount of \$824.01 for 2013. I will need your portion by Feb 3<sup>rd</sup> when it's due. Usually I have a year end credit of \$500.00 approx. this is the first year without one."

The tenant's response was "I don't think so."

Later that same day the landlord slipped a letter to the tenant, a copy of the January 10 B. C. Hydro bill and a copy of the addendum to the tenancy agreement under the tenant's door. The tenant acknowledged receipt of the letter on that date. The letter stated in part:

"#1) please read the 1. Clause of the Addendum, it explains the hydro (not \$ amount). The amount is 2/3 the monthly hydro bill. . .

I have contact the Tenancy Branch and was told you have 30 days to pay the outstanding amount starting February 3, 2014. If not paid you will be given a 10 day notice to vacate.

Please could you replace the rental cheques to the correct amounts of \$1200.00 on the 1<sup>st</sup> for the rent and the hydro amount will be \$300.00 as equal payment starting March/14 of which your portion is 2/3rds (\$200.00)."

A month or so later the landlord sent the tenant a text:

"new hydro bill came in and is due Mar 5/14. I guess since I haven't heard back for the last months bill, that you are still refusing to pay since you had til yesterday. Unfortunately for both of us I have no choice but to serve you your 10 day notice to end tenancy for unpaid utilities. I have the papers to give you. Here is a copy of the new bill."

The attached copy of the hydro bill shows that \$549.34 of the annual adjustment remains unpaid and that the monthly installment is \$300.00.

The tenant's response was "162.50 for hydro monthly is what you asked for that's what I pay you."

On March 4, 2014 the landlord issued and served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in the amount of \$549.34. The tenant has not paid that amount.

The landlord has cashed the tenant's cheques for January, February, March and April.

#### Analysis

Under an equalized payment plan with B. C. Hydro the customer pays the same amount every month. The monthly payment is calculated by B. C. Hydro based upon the previous year's usage. Once a year, B.C. Hydro calculates the actual cost of hydro for the preceding twelve months. If the actual usage is less than what was projected the customer receives a credit equal to the over payment. If the actual usage was higher than what was projected the customer is required to pay the difference between the actual cost and the amount already paid by installment. In either case, the monthly installment is adjusted up or down to reflect the previous year's actual consumption.

The agreement between the parties is very clear. The tenant is to pay 2/3 of the hydro bill. 2/3rds of the monthly equalized payment of \$254.00 is actually \$169.33, but the landlord only asked for \$162.50. The payment of \$162.50 fulfilled the tenant's obligation to pay 2/3 of the monthly equal payment charge, as it was received.

Under the terms of the tenancy agreement the tenant is also obliged to pay 2/3rds of the cost of any annual adjustment charged by B.C. Hydro. For 2013 this amount was \$549.34 and was due on February 4, 2014. Despite a written demand for payment of that amount, the tenant has refused and continues to refuse to pay this amount to the landlord.

Section 46(6) of the *Residential Tenancy Act* provides that 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.

The landlord served the tenant with a 10 Day Notice to End Tenancy in the proper form more than 30 days after the demand was made and the payment was due. As the sum of \$549.34 remains unpaid the tenancy is ended pursuant to section 46 of the *Act*. The landlord is entitled to an order of possession effective two days after it is served on the tenant.

The landlord also applied for a monetary order for the tenant's unpaid portion of the hydro bill. In her letter of January 21 the landlord told the tenant that the monthly payment increase was commence March 1, 2014. Accordingly, I find that the tenant is only responsible for the difference between the 2014 monthly installment and the 2013 monthly installment - \$37.50 – for March and April. I find that the tenant must pay the landlord the sum of \$624.34 (\$549.34 + \$37.50 + \$37.50).

Finally, as the landlord was successful on her application I find that she is entitled to reimbursement from the tenant of the \$50.00 fee she paid to file her application.

### Conclusion

- (a) An order of possession effective two days after service has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- (b) The landlord has established a total monetary claim of \$674.34 comprised of unpaid hydro charges in the amount of \$624.34 and the \$50.00 fee paid by the landlord for her application. I order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under

section 67 for the balance due of \$74.34. If necessary, this order may be 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: April 14, 2014

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Residential Tenancy Branch

