



# 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 concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The tenant also provided evidentiary material to the Residential Tenancy Branch and to the landlord prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of the hearing package or evidence were raised.

### Issue(s) to be Decided

Should the notice to end tenancy given for unpaid utilities be cancelled?

### Background and Evidence

The landlord's agent testified that he rents a basement suite from the landlord, and the tenant is a room-mate of the landlord's agent. The landlord permitted the landlord's agent to advertise for a room-mate, and the tenant moved into the rental unit with the landlord's agent in mid-July, 2013 and still resides there. No security deposit was collected from the tenant. The landlord's agent does not have a written tenancy agreement with the landlord, and the tenant does not have a written tenancy agreement with either the landlord or the landlord's agent. However, the parties agree that rent in the amount of \$325.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and the rent has, until recently been paid in cash to the landlord's agent who pays the landlord. Also collected is an additional \$25.00 per month for utilities, and the parties agree that each pays half of the utilities that the rental unit is responsible for. The

utilities, hydro and gas, are in the landlord's name and the bills go to the upstairs unit of the rental house which is also occupied by tenants. The basement rental unit pays one third, which the tenant and the landlord's agent are responsible for, and each pay one half of that. The tenant has paid \$25.00 per month since the outset of the tenancy.

The landlord's agent further testified that the tenant owed \$67.50 for outstanding utilities, and provided a letter to the tenant on February 3, 2014. The tenant has refused to pay. No copies of the bills have been provided.

A copy of a 10 Day Notice to End Tenancy for Unpaid Rent of Utilities has been provided by the tenant. The notice is dated March 2, 2014 and contains an expected date of vacancy of March 3, 2014. The landlord's agent testified that the dates are in error, and does not know when or how the tenant was served. The notice states that the tenant failed to pay utilities in the amount of \$67.50 following written demand on February 3, 2014.

The tenant testified that he is not satisfied that the amount demanded by the landlord's agent is justified. The tenant has paid \$25.00 per month since the outset of the tenancy and has not examined the bills to determine what the appropriate amount is. Copies of receipts and 2 money orders have been provided.

### Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay utilities, the tenant may be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities once 30 days have passed from the date the landlord requests the payment in writing. The tenant then has 5 days from the date of service of the notice to end tenancy to pay the utilities in full or dispute the notice. If the tenant pays the utilities within that 5 day period, the notice is of no effect. If the tenant disputes the notice within that 5 day period, the onus is on the landlord to prove the notice. If the tenant does not pay or dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In this case, the tenant filed an application for dispute resolution on March 5, 2014 requesting an order that the notice to end tenancy be cancelled, but I have no evidence before me of when or how it was served on the tenant.

The landlord's agent agrees that there is an error in the dates, however I am not certain whether the error is in the date the notice was issued or the date tenant is expected to

move out. If the error was in the date that the tenant was to move out, the *Act* states that an incorrect date is deemed to be the latest date that complies with the *Act*, and the effective date of vacancy would be 10 days after it was served on the tenant. Without any evidence with when the tenant was served, I cannot determine a date that complies with the *Act*.

I therefore find that the landlord has failed to establish service of the notice, and what errors ought to be accepted. I therefore cancel the notice to end tenancy.

The parties agree that rent in the amount of \$325.00 per month is payable on the 1<sup>st</sup> day of each month, and the tenant is responsible for half of the utilities applicable to that rental unit. The *Act* also permits me to make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including that the landlord or tenant comply with the *Act*, regulations or a tenancy agreement. Under that authority, I hereby order the parties to comply with the tenancy agreement respecting utilities, and I order the landlord to provide a copy of the utility bills, and both parties to calculate one third of the total bills for electricity and gas, and I order the tenant to pay one half of that amount by the due date quoted on the bills.

### Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

I hereby order the parties to comply with the tenancy agreement respecting utilities, and I order the landlord to provide a copy of the utility bills, and both parties to calculate one third of the total bills for electricity and gas, and I order the tenant to pay one half of that amount by the due date quoted on the bills.

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 22, 2014

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Residential Tenancy Branch

