



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR; MNDC; FF

### **Introduction**

This Hearing dealt with the Tenant's application filed October 9, 2014, to cancel a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* issued October 7, 2014 (the Notice); for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties acknowledged service of each other's Notice of Hearing documents. The Tenant acknowledged receipt of the Landlord's documentary evidence, by hand on November 10, 2014.

### **Issue to be Decided**

- Should the Notice be cancelled?
- Is the Tenant entitled to compensation in the amount of \$977.17 from the Landlord?

### **Background and Evidence**

The parties agreed that this tenancy began in 1993. The Landlord provided a copy of a tenancy agreement, signed by the parties on January 1, 2001. The agreement indicates that the Tenant paid a security deposit in the amount of \$450.00 on August 1, 1993. The tenancy agreement also indicates that rent was "\$875.00 plus 60% utilities", due on the first day of each month.

On December 27, 2012, the Landlord was successful in an Application for Dispute Resolution which increased monthly rent from \$1,117.30 to \$1,477.98, effective 3 months after serving the Tenant with notice of the rent increase on the prescribed form.

The rental property is a 4-plex. The Tenant occupies one of the four suites in the rental property.

The Tenant testified that “at some point in 2005/2006”, the percentage of utilities for which he was responsible changed from 60% to 50%. The Tenant stated that he does not agree that he owes \$977.17 in outstanding utilities, but that he gave the Landlord a cheque for \$977.17 to hold “in trust”, until outcome of this Hearing. The Tenant acknowledged receipt of the Notice on October 8, 2014. The Landlord acknowledged receipt of the Tenant’s cheque on October 9, 2014.

The Landlord provided a three page document entitled “Utility Record of Payment” for the period January 1, 2012 to and including September 10, 2014. The Landlord testified that the Tenant owes \$940.65 in unpaid utilities for that period. The Landlord also provided copies of utility bills for January 1, 2012, to August 31, 2014.

The Utility Record of Payment includes 31 late fee charges, each in the amount of \$20.00 for a total of \$620.00. The Landlord submitted that late fees for unpaid rent were allowed in the tenancy agreement and that she considered the delinquent utility payments to be late rent.

The Tenant questioned why the amount on the Utility Record of Payment (\$940.65) differs from the amount claimed on the Notice (\$977.17). The Tenant stated that he always paid the Landlord for his share of utilities after she e-mailed him a copy of the bill or put it in the mail. The Tenant stated that the Landlord originally gave him notice for arrears of \$760.00 over a period of 4 years, and that now she is asking for \$977.14 for 2 years, 10 months. The Tenant testified that he didn’t receive written demand or an accounting of the unpaid utilities until October, 2014.

### **Analysis**

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice.

In this case, I find that the Landlord has not provided sufficient evidence to support the Notice for the following reasons:

1. The Landlord has included late fees totaling \$620.00 since January 1, 2012. There is no provision in the Act or regulation for recovery of late fees for unpaid utilities, only unpaid rent. Section 46(6) of the Act provides that a landlord may treat unpaid utilities as unpaid rent if the utility charges are unpaid more than 30 days after the tenant is given written demand for payment of them. I find that the Landlord did not provide sufficient evidence that she provided the Tenant with **written** demand under the provisions of Section 46(6). Therefore, I find that unpaid utilities, if there are any, were not unpaid rent and that the Landlord is not entitled to \$620.00 in late fees. The Notice included this sum in the unpaid utilities and therefore I find that the Notice is not a valid notice to end the tenancy.
2. The Landlord did not provide an explanation for why the amount sought on the Notice and the Utility Record of Payment differed.
3. The Landlord did not mitigate her loss by issuing a demand notice for unpaid utilities until more than 2 years had passed since the Tenant was in arrears.
4. Late fees cannot be included on a 10 day notice to end tenancy, only unpaid rent; or unpaid utilities if written demand has been given and the tenant has not paid at least 30 days after receiving the written demand.

The Notice is cancelled. The tenancy will remain in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant's application had merit and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct **\$50.00** from future rent due to the Landlord.

This is the Tenant's application and therefore I make no finding or order with respect to whether there are unpaid utilities and if so, in what amount. I ORDER that the Landlord return the Tenant's uncashed cheque in the amount of \$977.14 immediately. If the Landlord has already cashed the Tenant's cheque, the Tenant may deduct \$977.14 from future rent due to the Landlord.

### **Conclusion**

**The Notice to End Tenancy issued October 10, 2014, is cancelled.** The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct **\$50.00** from future rent due to the Landlord, representing recovery of the cost of the filing fee.

**I ORDER that the Landlord return the Tenant's uncashed cheque in the amount of \$977.14 immediately. If the Landlord has already cashed the Tenant's cheque, the Tenant may deduct \$977.14 from future rent due to the Landlord.**

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: December 08, 2014

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Residential Tenancy Branch

