



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC; MNDC; OLC; FF; O

### **Introduction**

This is the Tenant's application to cancel a One Month Notice to End Tenancy for Cause; compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; "other" relief; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents were mailed to the Landlord, by registered mail sent December 17, 2014. The Tenant provided the tracking number for the registered documents. The Tenant stated that she also served the Landlord with her documentary evidence by registered mail, which the Landlord acknowledged receiving on December 22, 2014.

It was also determined that the Landlord mailed his documentary evidence to the Tenant, by registered mail, on December 30, 2014. The Landlord provided the tracking number for the registered documents. A search of the Canada Post Tracking System indicates that the Tenant signed for the documents on January 2, 2015.

### **Preliminary Matters**

The Tenant's Application for Dispute Resolution indicates that she is seeking "other" relief; however, she did not provide sufficient details in her Application with respect to what other relief she is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenant's application is dismissed.

The parties confirmed that the tenancy will end by mutual agreement on January 31, 2015. A copy of the Mutual Agreement to End a Tenancy, signed by the parties on

December 14, 2014, was provided in evidence. Therefore, the Tenant's application to cancel the Notice to End Tenancy for Cause issued December 11, 2014, is dismissed. The tenancy is ending and therefore, the Tenant's application for an Order that the Landlord comply with the Act, regulation or tenancy agreement is also dismissed.

The Hearing continued with respect to the Tenant's application 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.

### **Issues to be Decided**

- Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit?

### **Background and Evidence**

The rental property is a house with two suites. The Tenant lived in the upper suite. The lower suite was occupied by another tenant (the "lower tenant"). The Landlord and his wife live in a separate house, beside the rental property.

The upper and lower suite share the same hydro meter. The Tenant stated that at the beginning of the tenancy, the Landlord required the Tenant to place the hydro bill in her name. The Tenant signed a tenancy agreement, agreeing to be responsible for 60% of the hydro bill. The Tenant was required to collect the remaining 40% from the lower tenant. The lower Tenant moved out on July 31, 2014.

The Tenant testified that the lower tenant did not pay her for his share of the hydro bill from June 18, 2014, to July 31, 2014. She stated that the Landlord did not reimburse her for the lower tenant's share of the bill.

The Landlord stated that the Tenant asked that the hydro bill be in her name at the beginning of the tenancy because she wanted to build a credit rating. He stated that he was not aware until later that this kind of arrangement between tenants could be found to be unconscionable. The Landlord testified that he calculated what the lower tenant owed for hydro (\$26.10), and offered to pay the Tenant, but she refused to accept it.

A second lower tenant moved in on August 1, 2014. Hydro was included in the second lower tenant's tenancy agreement. The Landlord and the Tenant agreed that the Tenant would pay only 50% of the hydro commencing August 1, 2014. The Tenant's written tenancy agreement was not amended to reflect this.

After August 1, 2014, the hydro bill stayed in the Tenant's name and the Landlord paid 50% of the hydro bill directly to the Tenant. The Tenant testified that prior to August 1, 2014, the hydro bill was based on actual usage, but that she changed it to an equal payment plan effective August 1, 2014. Equal payments are calculated primarily based on the average monthly hydro usage from the last year's bills. The Tenant stated that the equal payments were calculated to be \$85.00, and that at the end of one year, there would be an adjustment. If she had over-paid for hydro, the next bill would have a credit. If she had under-paid, the next bill would include that amount. The Tenant stated that the second tenant "cranks up the heat" because he doesn't have to pay for utilities and that she is concerned that she may have under-paid. Therefore she wanted a written agreement that the Landlord would pay his half share of the difference.

The Tenant testified that she made three attempts to get the Landlord to sign an agreement with respect to hydro. She stated that the day after she presented the last draft of the agreement to the Landlord, he served her with a Notice to End Tenancy for Cause (on December 11, 2014). The Tenant submitted that the Landlord issued the notice in retaliation for the Tenant seeking advice from the Residential Tenancy Branch.

The Landlord stated that he had a great deal of difficulty getting a copy of the hydro bills from the Tenant. He testified that he agreed to pay 50% of the hydro bill, but only on the condition that the Tenant provide copies of the bills and that she issue receipts. The Landlord stated that the Tenant refused to issue receipts.

The Tenant stated that the bills were always the same because it was an equal payment plan and that the Landlord's cancelled cheque should serve as a receipt.

The Tenant stated that the Landlord was very rude to her on many occasions and that he did not respect her privacy. She stated that the Landlord would turn up on her doorstep, unannounced. The Tenant stated that the Landlord made it so uncomfortable for her to stay, that she decided to move. The Tenant requests compensation in the amount of \$1,000.00 for loss of peaceful enjoyment of the rental unit.

The Landlord disputed that he was rude to the Tenant. He stated that he was very "amiable" despite her "tiresome negotiations". The Landlord testified that the Tenant was in breach of the tenancy agreement. The Landlord stated that the Tenant smoked on the residential property, which was against the terms of the tenancy agreement, and shouted obscenities at him and his wife.

## **Analysis**

Section 1 of the Act defines "tenancy agreement" as follows:

"tenancy agreement" means an agreement, **whether written or oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit; [my emphasis added]

Section 14(2) of the Act provides:

### **Changes to tenancy agreement**

**14** (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Based on the testimony and documentary evidence of both parties, I find that the parties had a written tenancy agreement and that a term of the agreement was that the Tenant was responsible for 60% of the hydro bills. However, it is clear from both parties' testimony that the Landlord and Tenant reached a new (oral) agreement in August, 2014, with respect to the Tenant's share of hydro. Therefore, I find that the tenancy agreement was amended to reflect that the Tenant was responsible for 50% of hydro, pursuant to the provisions of Section 14(2) of the Act.

I explained to the parties that it has been found to be unconscionable for a landlord to require a tenant to pay for utilities on behalf of another tenant in a rental property and then to have to collect the other tenant's share of the utilities from that tenant. I cautioned the Landlord that he should consider either including utilities in rent for both of his tenants or having the utility bill in his name and then collecting each Tenant's share.

Pursuant to the provisions of Section 62 of the Act, **I ORDER the Landlord, upon receipt of written proof from the billing company of any amount the Tenant under-paid, to reimburse the Tenant for 50% of the said under-payment for the period of August 1, 2014, to January 31, 2015. The Tenant must provide this written proof to the Landlord for this Order to take effect.**

The Tenant seeks compensation in the amount of \$1,000.00 for loss of peaceful enjoyment of the rental unit. Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on both parties' testimony, I find that the main issue of dispute between the parties centered around the hydro payments. I also find that the Tenant contributed significantly to this unhappiness by refusing to provide the Landlord with a copy of utility bills. The monthly amount charged under a monthly payment plan can change and is not necessarily the same for a whole year. If hydro use, or the cost of providing the service, increases or decreases during the year, the monthly payment can increase or decrease accordingly. I find that both parties contributed to the eventual end of the tenancy and that the Tenant has not provided sufficient evidence to satisfy element 2, 3 or 4 of the test set out above. Therefore, I dismiss the Tenant's application for compensation in the amount of \$1,000.00.

I make no order with respect to the Tenant's application for recovery of the filing fee.

### **Conclusion**

**I ORDER the Landlord, upon receipt of written proof from the billing company of any amount the Tenant under-paid for the period of August 1, 2014, to January 31, 2015, to reimburse the Tenant for 50% of the said under-payment. The Tenant must provide this written proof to the Landlord for this Order to take effect.**

The remainder of the Tenant's application is dismissed **without leave to reapply**.

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: January 19, 2015

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Residential Tenancy Branch

