



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1000762 B.C. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This was a hearing with respect to the landlord's application for an order for possession and a monetary order for unpaid rent. The hearing was conducted by conference call. The landlord's representative and the named tenant called in and participated in the hearing. The landlord delivered copies of his documentary evidence to the tenant prior to the hearing.

### Issue(s) to be Decided

Is the landlord entitled to an order for possession pursuant to a Notice to End Tenancy for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and utilities and if so, in what amount?

### Background and Evidence

The rental unit is an upper duplex and there is a separate lower rental unit. The tenant J.C. moved into the rental unit in September, 2014. The unit was occupied by the tenant, S.J. when he moved in. S.J. was a long term tenant who has lived in the rental unit for many years and has had many other co-tenants over the years.

There was an earlier hearing with respect to this tenancy on February 10, 2015. In the decision dated February 12, 2015, the arbitrator addressed the tenant's complaints that there are mice and bedbugs in the rental unit as well as complaints that the landlord has entered the rental unit without notice and that the locks should be changed because many former occupants have keys to the rental unit. The tenant also complained in the earlier proceeding that the landlord failed to provide receipts for rent payments. The tenant disputed the landlord's claim that electricity was not included in the rent. In the February 12<sup>th</sup> decision with respect to the earlier hearing, the arbitrator said:

The issue of whether the rent includes hydro or not and therefore who is ultimately responsible for the payment of the hydro account is one of the fundamental issues of the application set for February 12. Accordingly, I will not be making a determination on that issue in this decision. At the February 12 hearing the onus of proof is on the landlord to establish that the rent does not include hydro and that the tenants had agreed to reimburse him for the hydro.

Except for a brief interruption there has been electrical service to the rental unit throughout this tenancy. Based on the record, no further order regarding the provision of electricity to the rental unit appears to be required.

Section 26(2) provides that a landlord must provide a tenant with a receipt for rent paid in cash. Although the tenant testified that the receipts submitted by the landlord were not accurate the receipts for September, October, November and December all say \$400.00 cash was received, which is what the tenant said he paid. If the landlord did not provide the tenant with the receipts at the time of payment he did provide them in the evidence package. In any event, there does not appear to be a flagrant disregard for the requirements of section 26(2) so no further order will be made.

The question of whether there were additional payments made by the tenant to the landlord for which he did not receive receipts is also an issue that is better decided at the hearing scheduled for February 12.

The landlord personally served the tenant with a 10 day Notice to End Tenancy for unpaid rent on January 6, 2015. The Notice alleged that the tenants failed to pay rent in the amount of \$250.00 that was due on January 1, 2015 and that they failed to pay utilities of \$620.00 that were due on December 1, 2014. The tenants did not apply to dispute the Notice to End Tenancy, but in this proceeding the tenant has argued that the utilities were included in his rent. The tenant referred to a "Shelter Information" form submitted to the provincial ministry of Social Development dated September 1, 2014. The document stated that the tenant, J.C.'s portion of the monthly rent was \$570.00 and the total rent was \$970.00. The tenant said that the form provided that the rent includes Hydro.

The landlord provided a copy of a tenancy agreement dated September 1, 2014. The agreement provided that the monthly rent is \$850.00, payable on the first day of each month. The agreement provided for a security deposit of \$425.00. The landlord has asked to retain the deposit in partial satisfaction of his monetary claim. According to the

tenancy agreement utilities are not included in the rent. The landlord also submitted a copy of a handwritten document dated September 4, 2014. The document stated as follows:

It is to confirm that (name of tenant S.J.) & (name of tenant J.C.) are jointly renting (address of rental unit). We are sharing the rent and are jointly & severally responsible for rent. The rent is \$850 P.M. for upstairs.  
(signed J.C.)

The cheques will be coming directly from Social Assistance & will pay for electricity

(J.C. initials, S.J, signature)

The landlord that when the tenant J.C. moved into the rental unit in September it was agreed that the tenants were responsible for the electricity, There is a separately metered electrical supply for the rental unit. The tenants were supposed to obtain their own Hydro account for the rental unit but the tenants were unable to qualify for an account. The electricity was briefly turned off before the landlord put the hydro account in his name. The landlord has submitted bill for the hydro utilities but they have not been paid and there is also rent outstanding.

The landlord claimed a monetary order in the amount of \$1,670.00. This amount included unpaid rent for January of \$250.00, rent for February in the amount of \$850.00 and unpaid utilities of \$970.00, less a \$400.00 payment accepted for use and occupancy on January 28, 2015.

### Analysis

Based on the documents submitted by the landlord and base on the oral testimony of the parties, I find that the tenancy agreement did not include utilities. I find that the handwritten note, taken together with the tenancy agreement shows that the tenants were supposed to pay for Hydro and it was expected that the account would be paid from the social assistance cheques paid directly to the tenants, but when the tenants were unable to obtain an account, the landlord took over paying the hydro bills and the tenants were to reimburse him. The fact that the Shelter Information form mentioned an amount for rent that exceed the actual rent causes me to conclude that the amount was intended to include an estimation of the expected Hydro costs.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenants must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. The tenants have not disputed the Notice to End Tenancy and have not paid the outstanding rent and utilities within the time allowed; the tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

*Order of Possession* - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

*Monetary Order and Security Deposit* – I accept as accurate the landlord's evidence as to payments received and I find that the landlord has established a total monetary claim of \$1,670.00 for the outstanding rent for January and February plus utilities as claimed. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,720.00. I order that the landlord retain the deposit and interest of \$425.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,320.00. 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: March 2, 2015

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Residential Tenancy Branch

