



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOORMANS PROPERTY MANAGER  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

CNR

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice").

The tenant and the landlord's agents (hereafter "landlords") attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the parties confirmed that they had received the other's evidence packages and the landlord confirmed receiving the tenant's application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

The tenant in particular submitted a significant amount of documentary evidence that was not relevant in considering whether the landlord's Notice was valid and enforceable. I have reviewed all the oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the **relevant** evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

### Background and Evidence

The undisputed evidence shows that this tenancy originally began on August 1, 2007, monthly rent is \$1830.00, and the tenant paid a security deposit of \$800.00 on or about July 16, 2007.

The landlord submitted a copy of a written tenancy agreement, signed by the parties during this tenancy, with a start date of August 1, 2013.

In support of their Notice, the landlord submitted that they served the tenant the Notice on February 24, 2015, by registered mail. The Notice listed unpaid utilities of \$1676.70, due as of December 1, 2014, and an effective move-out date of February 22, 2015.

The Notice informed the tenant that the Notice would be cancelled if the unpaid utilities were paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. The tenant's application in dispute of the Notice was filed on March 2, 2015.

The landlord submitted that they issued the Notice to the tenant as the tenant had not paid the water bill in full, which was in the tenant's name, for a period of time, and at the time the Notice was issued, the tenant had a deficiency in unpaid utilities in the amount listed on the Notice. The landlord submitted further that the utility bill deficiency was now attached to the owner's property taxes and therefore the owner was liable to pay the tenant's water bill.

The landlord relied on the term in the written tenancy agreement, section 11, which stated that any utilities that were not included in monthly rent and were not to be paid by the landlord were the responsibility of the tenant. This clause goes on to state that the tenant's discontinuation of the utility service or failure to maintain the utility service was a breach of a material term of the tenancy agreement, giving the owner the right to end the tenancy. Further, the clause stated that any utilities remaining unpaid after 30 days written notice would be considered unpaid rent, allowing the landlord to issue a notice to end the tenancy. The written tenancy agreement shows that no utilities were included with the monthly rent.

The landlord submitted further that they had made several written demands to the tenant, and despite the demands, the tenant has not paid the outstanding water bill.

#### *Tenant's response-*

The tenant submitted that he did not find out about the water bill until February 24, 2015, and that the water bills had become too costly to afford to pay, once the municipality had taken over the service.

The tenant submitted further that his rent and utilities are paid by government ministries, who will now be reassessing their payments, and that he should be able to catch up on all utility deficiencies by August 2015.

#### Analysis

After reviewing only the relevant oral and documentary evidence, I find that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on or about February 24, 2015, and that he filed an application for dispute resolution in dispute of the Notice within the required time frame of 5 days from service of the Notice. I make this finding due to section 90 of the Act, which states that documents served by registered mail are deemed delivered 5 days later. Thus the tenant was deemed to have received the Notice on March 1, 2015, and the application was filed on March 2, 2015.

As to the landlord's Notice, Section 46(6) of the Act states that a landlord may treat unpaid utilities as rent for the purpose of the Notice if the tenancy agreement provides that the tenant pay utility charges to the landlord and they remain unpaid 30 days after written demand for the payment. In this case, I do not find any term on this tenancy agreement which requires the tenant to pay the landlord for utility charges, as the tenant was responsible for his own utilities, and in fact, had the utilities in his name, as indicated on the bills submitted into evidence.

For this reason, I find the landlord has not supported their Notice as there is no term in the written tenancy agreement requiring the tenant to pay utility costs to the landlord, and I therefore order that the Notice be cancelled, with the effect that the tenancy continue until it may otherwise end under the Act.

### Conclusion

The tenant's application for cancellation of the Notice is granted, as I have ordered that the Notice be cancelled.

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 7, 2015

---

Residential Tenancy Branch

