



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF; MT, CNR, OLC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid utilities pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both the tenant and landlord appeared. The parties confirmed receipt of the other parties' documents. The tenant confirmed that she had opportunity to review the landlord's digital evidence.

The landlord testified that he served the tenant with the 10 Day Notice on 3 March 2015 by posting the notice to the tenant's door. The landlord provided me with a witnessed proof of service document that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act on 6 March 2015.

### Preliminary Issue – Scope of Application

During the hearing, I asked the tenant with what part of the Act, regulations or tenancy agreement she sought the landlord to comply. The tenant could not identify anything. As the tenant could not articulate any remedy that she sought, I dismiss this part of the tenant's application with leave to reapply.

### Issue(s) to be Decided

Is the tenant entitled to more time to make her application to cancel the 10 Day Notice? Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began in December 2013. Monthly rent of \$1,300.00 is payable on the first. There is no written tenancy agreement. The landlord testified that he continues to hold the tenant's security deposit in the amount of \$300.00, which was collected in January 2013. The parties agree that the practice has been that the tenant would pay 40% of the utilities bill.

On 3 March 2015, the landlord served the 10 Day Notice to the tenant. That notice had a corrected effective date to end tenancy of 16 March 2015. The notice set out that the tenant had failed to pay \$201.15 in utilities that was demanded on 22 January 2015.

On 30 March 2015, the tenant applied to cancel the 10 Day Notice.

The landlord provided me with a handwritten note dated 22 January 2015. That note demanded the tenant pay \$201.15 in utilities. The note included an enclosure of the utility bills for January: a hydro bill in the amount of \$147.53 and a gas bill in the amount of \$53.62. The landlord claims for a total amount of \$407.55, which includes other allegedly unpaid utility bills.

The tenant testified that the January utility bills are the only bills that she has received from the landlord. The tenant testified that she has calculated that she overpaid approximately \$485.00 in utilities.

The tenant testified that the utility costs are dealt with as part of a separate agreement and are not part of the tenancy agreement.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if utilities are unpaid 30 days after the tenant is given a written demand for payment of them, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The parties only have an oral tenancy agreement. The parties agreed that the tenant would bear the costs of 40% of the utilities bill; however there is dispute as to whether or not that agreement forms part of the tenancy agreement. I was not provided with any evidence by the tenant that would explain why she believed that the agreement was separate from the tenancy agreement. I find that the agreement as to utility payment forms part of the oral tenancy agreement. The landlord provided written demand for payment of utilities on 22 January 2015.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
  - a. The extension is agreed to by the landlord;
  - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The corrected effective date of the 10 Day Notice was 16 March 2015. The tenant applied for dispute resolution 30 March 2015. In accordance with subsection 66(3), I

have no discretion to extend the time limit in these circumstances. Accordingly, the tenant's application for an extension of time is dismissed.

As the tenant's request for an extension of time is dismissed, the conclusive presumption contained in subsection 46(5) is applicable. The tenant failed to pay the outstanding utilities amount within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 16 March 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

A party claiming compensation pursuant to section 67 bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The tenant asserts that she has not received copies of past utility bills. The tenant believes that she has overpaid the past accounts. The landlord has not provided me with past copies of the utility bills or any ledger that would explain how the current amount owing was determined.

I find that the landlord has failed to show, on a balance of probabilities, the amount of utilities outstanding. As such, I dismiss the landlord's application for a monetary order to collect \$407.55 without leave to reapply.

As the landlord has been partially successful in his application, pursuant to section 72, I order that he may recover one half his filing fee for this application from the tenant.

The landlord testified that he continues to hold the tenant's \$300.00 security deposit, plus interest paid at the beginning of the tenancy. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain \$25.00 from the security deposit in satisfaction of the monetary award.

Conclusion

The tenant's application to cancel the 10 Day Notice and for more time is dismissed without leave to reapply.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I order the landlord to recover \$25.00 from the tenant by allowing the landlord to retain \$25.00 from the security deposit for this tenancy. I order that the value of the security deposit for this tenancy is reduced from \$300.00 to \$275.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 30, 2015

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Residential Tenancy Branch

