



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, MT, DRI, PSF, FF

For the landlord: OPR, MNDC, MNR, MND, MNSD, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy 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") issued by the landlord, for an order granting more time to make an application to cancel a notice to end tenancy, to dispute an additional rent increase, an order requiring the landlord to provide services or facilities required by law, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit due to unpaid utilities, a monetary order for money owed or compensation for damage or loss, unpaid utilities, and alleged damage to the rental unit, for authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application.

The landlord attended the hearing; the tenant did not attend.

The landlord stated that she served the tenant her application for dispute resolution and notice of hearing letter by registered mail, that the mail was unclaimed, and that when the registered mail envelope was returned to her, she hand delivered the envelope with the application to the tenant on or about July 9, 2015.

Based upon the landlord's submissions, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord was provided the opportunity to present her evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written 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.

*Procedural matter*-In the absence of the tenant to present his claim, pursuant to section 10.1 of the Dispute Resolution Rules of Procedure (Rules), I dismiss the tenant's application, with leave to reapply.

*Procedural matter #2*-The landlord submitted that the tenant vacated the rental unit on February 28, 2015, and that an order of possession for the rental unit was no longer requested. I therefore amend her application removing that request.

*Preliminary matter*-I have determined that the portion of the landlord's application dealing with a monetary claim for damage to the rental unit is unrelated to the primary issue of disputing or enforcing the Notice and for a request for unpaid utilities.

As a result, pursuant to section 2.3 of the Rules, I have severed that portion of the landlord's application and dealt only with the remaining portions. The portion of the landlord's application that was severed is dismissed, with leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for monetary compensation from the tenant and to recovery of the filing fee paid for this application?

#### Background and Evidence

The landlord supplied two written tenancy agreements showing that this tenancy originally began on October 1, 2013, for a monthly rent of \$1000.000, and a security deposit of \$500.00 being paid by the tenant. In this written tenancy agreement, water was included with the monthly rent.

The second tenancy agreement showed the new tenancy beginning on October 1, 2014, for a monthly rent of \$1000.00; however, water was no longer included with the monthly rent.

The landlord discovered that the tenant vacated the rental unit approximately July 7, 2015, according to the landlord.

The landlord submitted that the local municipality assesses utilities against each property, including hydro and water, and that the tenant failed to pay any hydro since the tenancy began and for the water service, beginning in October 2014. The landlord submitted that the unpaid utilities were attached to her property taxes and that she has paid for the utilities used by the tenant.

The landlord submitted that on June 13, 2015, she served the tenant with the Notice, by attaching it to the tenant's door, listing unpaid utilities of \$3132.91 as of May 14, 2015. The effective vacancy date listed on the Notice was June 30, 2015.

The Notice informed the tenant that he had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the utilities in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The tenant did file his application to dispute the Notice, but did not attend the hearing in support of his application and it has been dismissed.

The written tenancy agreements did not require the tenant to pay the landlord for utilities; rather, the tenancy agreements show that the tenant was responsible for hydro costs and beginning on October 1, 2014, he was responsible for both hydro and water.

The landlord submitted that since the Notice was issued to the tenant, there have been additional utilities costs incurred by the tenant, without any payments by the tenant.

The landlord's relevant documentary evidence included, but was not limited to, utilities statements, the 2 written tenancy agreements, a copy of the Notice, and a proof of service of the Notice.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the \*\* has the burden of proof to substantiate their claim on a balance of probabilities.

In the case before me, I do not find that the landlord's Notice is enforceable, as the written tenancy agreements did not require the tenant to pay utility charges to the landlord. Therefore, unpaid utilities cannot be treated as unpaid rent under section 46(6) of the Act and may not be included on a 10 Day Notice. Although the Notice is not enforceable, in this case the tenancy is over.

As to the landlord's monetary claim for unpaid utilities, however, I find the landlord submitted sufficient, undisputed oral and documentary evidence that the tenant was responsible to pay for his hydro costs since October 1, 2013, and water costs since October 1, 2014, and failed to pay any of these costs. As the utility costs are now attached to the landlord's property tax, I find the landlord submitted sufficient evidence to show that she has or will suffer a financial loss.

I therefore find the landlord is entitled to a monetary award for unpaid utilities incurred by the tenant through May 13, 2015, as listed on the Notice in the amount of \$3132.91.

I also allow the landlord to recover the cost of her filing fee of \$50.00.

I therefore find that the landlord is entitled to a total monetary award of \$3182.91 comprised of unpaid utilities of \$3132.91 through May 13, 2015, and the \$50.00 filing fee paid by the landlord for this application.

At the landlord's request, I direct the landlord to retain the tenant's security deposit of \$500.00 in partial satisfaction of her monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$2682.91, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's application is dismissed without leave to reapply due to his failure to attend the hearing.

The landlord's application for a monetary award for unpaid utilities through May 13, 2015 and for recovery of the filing fee is granted and she has been issued a monetary order in the amount of \$2682.91.

The portion of the landlord's application for other monetary compensation and further unpaid utilities is dismissed with 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: August 21, 2015

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Residential Tenancy Branch

