



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPR MNR MNSD MNDC  
For the tenant: CNC CNR

### Introduction

This hearing dealt with cross-applications by the parties for Dispute Resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain all or part of the tenant’s security deposit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause, and to cancel a 10 Day Notice for Unpaid Rent or Utilities (the “10 Day Notice”).

The tenant and the landlord attended the start of the teleconference hearing and gave affirmed testimony. At the outset of the hearing, the hearing process was explained to the parties, as were expectations regarding conduct during the hearing. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the affirmed testimony is provided below and includes only that which is relevant to the hearing.

The parties did not dispute receiving documentary evidence from the other party. I find the parties were sufficiently served in accordance with the Act as a result.

### Preliminary and Procedural Matters

At the outset of the hearing, the tenant stated that he only had 10 minutes left on his cell phone and that he had no other way to call into the hearing. The parties were reminded that the hearing was a legal hearing and that the parties were expected to have made arrangements prior to the hearing of which they had sufficient notice, to ensure they could remain on the teleconference call for the entire length of the hearing. Despite this,

the tenant disconnected after 19 minutes into the hearing, and did not call back into the hearing. The hearing concluded after a total of 30 minutes.

As there was no 1 Month Notice to End Tenancy for Cause submitted in evidence, I dismiss that portion of the tenant's claim due to insufficient evidence without leave to reapply.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Should the 10 Day Notice be cancelled?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

### Background and Evidence

The parties agreed that a month to month tenancy began on May 1, 2014 and that monthly rent was \$600 per month and due on the 31<sup>st</sup> day of the month prior. For example, May rent would be due on the last day of April. The parties agreed that their tenancy agreement said "Hydro 50/50", which they both acknowledged meant that the landlord and tenant would pay 50% of the hydro bill. The tenant disputed the amount of the hydro bills, and stated that he was of the position that he was only required to pay 50% of the original hydro bill presented to him, and that the bill would not increase during the tenancy. The landlord's position was that the tenant was required to pay 50% of each hydro bill as each bill was received, and that there was never any promises or agreement made that the tenant would only pay 50% of the original hydro bill.

The parties confirmed that the tenant paid a security deposit of \$300 at the start of the tenancy, which the landlord continues to hold.

The landlord's application indicates that her monetary claim was \$1,779.18, however, the actual total is \$1,785.18 as the landlord stated she did not have the September 2015 hydro bill when she filed her application. As this amount is very similar to the original claim, I permit the landlord to amend her application pursuant to section 64(3) of the *Act*. Therefore, the landlord's monetary claim for \$1,785.18 is comprised of the following:

ITEM DESCRIPTION	AMOUNT
1. Unpaid rent for August 2015	\$600
2. Unpaid rent for September 2015	\$600
3. 50% of \$800.36 July 2015 hydro bill which includes the annual adjustment for the monthly payment	\$400.18
4. 50% of \$179 August 2015 hydro bill	\$89.50
5. 50% of \$191.01 September 2015 hydro bill	\$95.50
<b>TOTAL</b>	<b>\$1,785.18</b>

A copy of the 10 Day Notice dated August 12, 2015 was submitted in evidence. The tenant wrote in his application that he received the 10 Day Notice on August 12, 2015 and disputed the 10 Day Notice on August 14, 2015. The tenant also confirmed during the hearing before he disconnected from the hearing, that he did not pay rent for August or September 2015 and would be moving soon. The effective date of the 10 Day Notice was August 22, 2015 and indicates that \$600 was due as of July 31, 2015.

The tenant confirmed that he continues to occupy the rental unit as of the date of the hearing, September 30, 2015.

A copy of all the hydro bills supporting the landlord's monetary claim were submitted in evidence.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – I accept the tenant's testimony that he failed to pay rent of \$600 for August and September of 2015. Therefore I dismissed the tenant's application to cancel the 10 Day Notice, as I find the tenant has provided insufficient evidence.

I uphold the 10 Day Notice as the 10 Day Notice is valid. The effective date of the 10 Day Notice was August 22, 2015. Based on the above, I find the tenancy ended on August 22, 2015 and that the tenant has been overholding in the rental unit ever since that date. Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Claim for unpaid rent and loss of rent** – I find the tenant has provided insufficient evidence to prove that any rent was paid for August or September of 2015. Section 26

of the *Act* states a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the 31<sup>st</sup> day of the month prior, so for August 2015 rent, the due date was July 31, 2015 and for September 2015 rent, the due date was August 31, 2015. Therefore I find that the landlord has met the burden of proof and has established a monetary claim of \$1,200 comprised of \$600 owing for August 2015 rent, plus loss of rent of \$600 for September 2015 as the tenancy ended on August 22, 2015, the effective vacancy date of the 10 Day Notice.

**Claim for unpaid utilities** – I find the tenant has provided insufficient evidence to support that he was only required to pay 50% of one hydro bill amount. I find that that explanation provided by the tenant is improbable and prefer the testimony of the landlord as a result. I have also considered that the parties agreed that the agreement was that hydro would be paid 50% by the landlord, and 50% by the tenant, and that the more hydro used by the parties, the higher the hydro bills would be and based on the same logic, the lower the hydro used by the parties, the lower the hydro bills would be. I also find that the landlord provided sufficient evidence of the amount owing and I grant the landlord the amount for the hydro bills as claimed and described further below.

**Monetary Order** – I find that the landlord is entitled to a monetary order pursuant to section 67 of the *Act* as follows:

ITEM DESCRIPTION	AMOUNT
1. Unpaid rent for August 2015	\$600
2. Unpaid rent for September 2015	\$600
3. 50% of \$800.36 July 2015 hydro bill which includes the annual adjustment for the monthly payment	\$400.18
4. 50% of \$179 August 2015 hydro bill	\$89.50
5. 50% of \$191.01 September 2015 hydro bill	\$95.50
<b>SUBTOTAL</b>	<b>\$1,785.18</b>
<i>(Less Tenant's \$300 security deposit + \$0.00 in interest)</i>	<i>-\$300</i>
<b>TOTAL</b>	<b>\$1,485.18</b>

Pursuant to section 72 of the *Act*, I **authorize** the landlord to retain the tenant's full security deposit of \$300 which has accrued \$0.00 in interest since the start of the tenancy, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$1,485.18**.

### Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$1,785.18 as indicated above. The landlord has been authorized to retain the tenant's full security deposit of \$300 in partial satisfaction of the landlord's monetary claim. The landlord has also been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$1,485.18. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 1, 2015

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Residential Tenancy Branch

