



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MT, OPR, MNR, MNSD, MNDC, FF

### Introduction

In the first application, the tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent or utilities dated March 7, 2016 and received by him on the same day.

He also seeks more time to make his application but the landlords' representative agrees that the tenant's application was made within the five day period prescribed in the Notice. An extension of time is not required.

In the second application the landlords seek an order of possession pursuant to the Notice and a monetary award for unpaid rent and utilities.

The parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Is the Notice a valid notice? What, if anything, are the landlords owed?

### Background and Evidence

The rental unit is an apartment. The tenancy started in May 2011. Currently the monthly rent is \$730.00, though the tenant claims it has been raised illegally. Rent is due on the first of each month and most of it (\$653.00) is paid to the landlords directly from the welfare office on the tenant's behalf. The tenant makes up the remainder of each month's rent and pays it directly to the landlord.

The landlords hold a \$325.00 security deposit paid in May 2011.

The Notice claims that the tenant has failed to pay rent. The form of Notice to End Tenancy (#RTB-30) provides a blank area to indicate the amount owing and the date it was due. The Notice in question states "see attached" in the amount owing area. The

due date has been left blank. It would appear that attached to the Notice was a document demanding that the tenant pay outstanding utilities.

The Notice also claims that the tenant has failed to pay utilities of \$274.63 following written demand on February 4, 2016.

Mr. D.M. for the landlord testifies that a total of \$712.72 was owed for utilities at the time the Notice was given. Since then an additional BC Hydro bill for February has been received in the amount of \$133.29. He produced the relevant BC Hydro bills in support of that claim.

He says that in calculating the amount demanded in the Notice the amount owing was reduced by the landlord by \$150.00 received from a housing benefactor of the tenant and by a further \$278.10 for work performed by the tenant doing small jobs for the landlord in and around the property. He provided a breakdown of the work the tenant performed, multiplied by a wage of \$10.00 per hour.

It is agreed the remainder of BC Hydro bills owing tallies \$274.62 after the deductions.

The amount demanded in the Notice exceeds that tally by a penny. Mr. D.M. considers the error to be inconsequential or too trivial to have an effect.

Mr. D.M. provided copies of written demands for payment of the utilities. The first, dated February 4, 2016, demands \$720.21. Mr. D.M. acknowledges that this was a miscalculation, as only \$712.72 was owed at that time for outstanding BC Hydro.

On March 2, 2016 the landlord issued another demand for utility payment. This time the amount demanded was \$552.73. It would appear that the sum was derived by taking the outstanding \$712.72 and deducting the \$150.00 received from the benefactor. Simple subtraction shows the correct remainder to be \$562.72.

A second demand was issued March 7, 2016 and given with the Notice itself. It includes deductions for the \$150.00 from the benefactor and the wage credit, though, for some unexplained reason, the wage credit is shown as \$278.10 and not \$278.00. The demand is for the amount of \$274.63; the amount claimed in the Notice.

Mr. D.M. says that based on the monthly rent of \$730.00, the tenant has been short by \$77.00 in March 2016 and again in April and so he owes \$154.00 in outstanding rent.

In response, the tenant says the landlords raised his rent by \$28.00 in November 2011, after only six months into the tenancy. He produces copies of the rent increases. He does not have the one purporting to raise the rent by \$28.00 in November 2011.

Regarding the work he has done for the landlords, he says he hasn't kept track of the work.

### Analysis

As stated at the end of the hearing, the ending of a tenancy by a landlord is a very serious matter. A landlord will be required to comply strictly with the provisions permitting termination.

In the case of a ten day Notice to End Tenancy for unpaid rent or utilities, the Notice must state the amount a tenant can pay within five days after receipt of the Notice, so as to render it void. The amount demanded by a landlord, whether for rent or utilities or both, must be an accurate figure of what is owing; not a penny more.

In this case, the Notice is both incorrect and misleading.

The amount demanded for utilities is, in fact, a penny too much. As well, before issuing a ten day Notice for unpaid utilities a landlord must give written demand and wait 30 days for payment. Section 46(6) of the *Residential Tenancy Act* (the "RTA") which sets the rules for ten day Notices for unpaid rent, provides:

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and  
(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,  
the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In this case the landlord's initial written demand of February 4 was for an amount over what was owed; \$720.21 instead of \$712.72. For that reason the demand letter could not form the basis of a valid ten day Notice.

As well, the demand was altered by credits given to the tenant for the benefactor payment and work done. If either the March 2 or March 7 letters to the tenant can be considered demands, the landlord did not wait 30 days for payment.

For these reasons the Notice cannot be confirmed as a valid Notice and must be cancelled.

In addition, the Notice gives the impression that rent is owed and that the amount of rent that the tenant is required to pay to void the Notice is in a schedule. As was clear at hearing, there was, in fact, no rent being demanded under the Notice. For this reason I would find the Notice to be ambiguous and would cancel it.

Regarding the allegation of an unlawful rent increase, I am unable to agree with the tenant. The documents he provided most likely show that his rent was increased by \$28.00 effective November 1, 2012, not 2011. That was more than a year after this tenancy started. The \$28.00 rent increase was, at that time, within the permitted rent increase percentage permitted by regulation under the *RTA*.

The remaining increases are all within the law and regulation.

Regarding work done by the tenant, I accept the landlords' figures as being the only accurate account, having regard to the tenant's admission that he didn't keep track himself.

In result, the current monthly rent under this tenancy is \$730.00.

The tenant is in arrears of rent to and including April 2016 in the amount of \$154.00.

I find that after the deductions of benefactor money and work credits the tenant owes the landlords \$274.62 for BC Hydro plus the February bill of \$133.29, for a total of \$407.91.

As each side has been partially successful, I decline to make any award for recover of the filing fee.

#### Conclusion

The ten day Notice to End Tenancy dated March 7, 2016 is cancelled.

The landlords are entitled to a monetary order against the tenant in the amount of \$561.91.

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 24, 2016

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Residential Tenancy Branch