



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, RP

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent or utilities, for compensation under the Act, regulations or tenancy agreement and for repairs to the unit.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on September 2, 2016 and the amendment to the application by registered mail on October 11, 2016. The Landlord said they received the Tenant’s amended application package on October 13, 2016. Although the Tenant’s amended application package was not served within the 14 days prior to the hearing as required by the rules of proceedings; I find that it did not prejudice the Landlord as the Landlord had enough time to review the documents and information. Consequently based on the evidence of the Tenant and testimony of the Landlord, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy for unpaid rent or utilities?
2. Is there a loss or damage to the Tenant and if so is the Tenant entitled to compensation?
3. Are there repairs to be done to the unit, site or property?

### Background and Evidence

The Tenant said the tenancy started on March 1, 2016 and the Landlord said the Tenant moved in with another tenant March 1, 2016 but this tenancy started on April 1, 2016 as in the tenancy agreement. Rent is \$1,400.00 plus \$250.00 for utilities for a total rent of \$1,650.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant said they had a verbal agreement rent was due on the 1<sup>st</sup> and utilities were due on the 15<sup>th</sup> of each month. The Tenant paid a security deposit of \$700.00 on February 29,

2016 and the Tenant said a utilities deposit was paid in March, 2016. The Landlord said no utilities deposit was paid. The Tenant said she completed and gave a copy of the move in condition inspection report to the Landlord at the start of the tenancy, but the Landlord did not sign or return the report until October, 2016.

The Landlord said she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated August, 23, 2016 on August 23, 2016. Then the Landlord served the Tenant another 10 Day Notice to End Tenancy for unpaid rent or Utilities dated October 6, 2016 on October 6, 2016 for unpaid rent and utilities. The Landlord said the Notice to End Tenancy was personally delivered to the Tenant on October 6, 2016 with a witness. The Effective Vacancy Date on the Notice to End Tenancy is October 19, 2016. The Landlord said the Tenant is living in the unit and the Landlord requested to end the Tenancy as soon as possible.

The Landlord continued to say that the Tenant has unpaid rent or utilities of \$968.00 for the tenancy. The Landlord said she submitted the rent payment ledger with all the payments the Tenant has made and the Tenant is short \$968.00 from the total amount that should have been paid.

The Tenant said she has not made the full rent and utility payments of \$1,650.00 per month because the Landlord has not proven the utility costs to the Tenant. The Tenant said she believes she has over paid the water and sewer costs by \$900.00. The Tenant said if she is successful with her compensation claim then the compensation for the water and sewer will cover the unpaid rent or utilities. The Tenant continued to say the water from the well on the property is not drinkable and the sewer goes to a septic system so the Landlord should not be charging for water and sewer.

The Landlord said the utilities contracts and invoices stayed in the Landlord's name and the tenancy agreement was for \$250.00 per month for utilities costs to be paid by the Tenant. The Landlord said the Tenant is contracted to pay \$1,650.00 per month as rent and to cover utilities and the Tenant has unpaid rent.

The Tenant agreed if the dispute about the water and sewer is not considered then there is unpaid rent or utilities.

The Tenant left the hearing before the hearing ended and the Tenant did not dial back into the conference call.

Analysis

**Section 26(1)** says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

**Section 46** says (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.

As both the Landlord and the Tenant agree there is unpaid rent or utilities and the Landlord gave the Tenant formal notice of the unpaid utilities on August 23, 2016; Tenant does not have the right to withhold all or a portion of the rent or utilities from the Landlord when it is due. I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated October 6, 2016 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of the Order on the Tenant.

Further I find the Tenant has not established grounds to show that the Landlord has not complied with the tenancy agreement with regards to the water and sewer; therefore I dismiss the Tenant's request for monetary compensation for the costs of water and sewer.

Further as the tenancy is ending I dismiss the Tenant's request for repairs to the unit. If there are repairs required to the unit, site or property I urge the Landlord to make these repairs prior to renting the unit to new tenants.

Conclusion

The Tenant's application is dismissed without leave to reapply.

An Order of Possession effective 2 days after service to the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: October 24, 2016

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Residential Tenancy Branch