



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OPR; OPC; OPB; MNR; MNSD; FF

### **Introduction**

This is the Landlord's Application for Dispute Resolution made March 21, 2017, seeking an Order of Possession; a Monetary Order for unpaid utilities; to deduct the Landlord's monetary award from the security deposit and pet damage deposit; and to recover the cost of the filing fee from the Respondents.

It is important to note that on March 3, 2017, the Tenant TH made an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Unpaid Rent or Utilities; to dispute an additional rent increase; and for return of the security and pet damage deposits. On March 29, 2017, the Tenant TH cancelled this Application and therefore this Hearing is for the Landlord's Application only. There was also a question of the standing of the Respondent JH; the Tenant TH argued that he was not a part of the tenancy agreement and the Landlord argued that he was.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that a process server served both of the Respondents by hand delivering the Notice of Hearing documents to the Respondent TH at the rental unit on March 24, 2017 at 5:35 p.m. The Landlord provided two Proof of Service documents in evidence. The Landlord testified that the process server also provided the Respondent TH with copies of the documentary evidence filed with her Application.

Section 89 of the Act provides the following with respect to how certain documents must be served:

## Special rules for certain documents

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

(2) An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

[Reproduced as written]

To clarify, if a landlord seeks an order of possession only, the landlord may serve all tenants in accordance with the provisions of Section 89(2) of the Act. However, when a landlord seeks additional relief (for example, a monetary award against more than one tenant), then all of the tenants must be served separately by one of the methods

described in Section 89(1)(a),(c),(d), or (e). In this case, the Landlord is seeking a monetary award against two people. The Proof of Service documents confirm that both packages were hand delivered to the Tenant TH. The Respondent JH was not personally served, as is required under the Act. The Landlord did not receive an Order under Section 89(1)(e) that the Respondent JH could be served with the Notice of Hearing documents in another manner. Therefore, I find that the Landlord did not provide sufficient proof of service upon the Respondent JH, and the Landlord's Application for a monetary award against JH is dismissed.

Both parties provided many oral submissions and much documentary and oral evidence with respect to whether or not the Respondent JH was the Landlord's tenant. The Tenant TH submitted that he was not a tenant; the Landlord submitted that he was. As I have dismissed the Landlord's Application against JH, I make no finding in that regard and have not recorded the parties' submissions. Only the relevant evidence and submissions are recorded in this Decision. For clarification purposes, if the Respondents were found to be co-tenants, they must apportion any debt or the return of any portion of the security deposit between themselves.

The Landlord stated that copies of some additional documentary evidence were mailed to the Tenant TH (hereinafter referred to as the "Tenant") by registered mail sent on March 27, 2017. The tracking number for the registered documents was provided. Included in the additional evidence is a monetary order worksheet indicating that the Landlord is also seeking additional compensation for unpaid utilities for February and March, 2017, along with compensation for "snow removal" and "horse manure clean-up", for a total additional claim of \$2,811.67.

An Application for Dispute Resolution cannot be amended by simply providing additional evidence (see Rule 4 of the Rules of Procedure). I find that the Landlord did not amend and serve the Tenant with an Amendment to an Application for Dispute Resolution form in accordance with Rule 4 of the Rules of Procedure and therefore these additional items were not considered in this Decision. The Landlord is at liberty to make another Application for Dispute Resolution with respect to these issues.

The Landlord provided an additional package of documentary evidence to the Residential Tenancy Branch on April 10, 2017. The Tenant did not receive the additional package and therefore this portion of the Landlord's documents was not considered.

After the Hearing had concluded, the Tenant also provided an additional document, by fax, to the Residential Tenancy Branch. During the Hearing, I made no Order that either

party could provide additional evidence after the conclusion of the Hearing and therefore this document was not considered.

The parties acknowledged that Tenant has moved out of the rental unit. Therefore, the Landlord's application for an Order of Possession is dismissed as the Landlord has taken back possession of the rental unit.

**Issue(s) to be Decided**

- Is the Landlord entitled to a monetary award for unpaid utilities?
- If so, may the Landlord deduct her monetary award from the security and pet damage deposits?

**Background and Evidence**

This tenancy began on August 15, 2016. Monthly rent was \$1,000.00, due on the first day of each month. A security deposit and a pet damage deposit were paid, each in the amount of \$500.00, for a total of \$1,000.00.

The rental unit is the basement suite in the Landlord's home. The rental property also includes a paddock, pump house, and barn where horses and chickens were kept. There is one electric meter for all of the structures on the rental property. It is undisputed that there was third person ("AN"), as well as the Tenant and the Respondent JH, who kept livestock in the barn.

With her Application for Dispute Resolution, the Landlord provided a monetary order worksheet indicating that she seeks a monetary award for unpaid utilities up to and including the month of January, 2017, in the amount of \$409.65, and \$100.00 for "service fee for dispute application", for a total claim of \$509.65.

The Tenant submitted that utilities were included in the monthly rent.

The Landlord submitted that the Tenant signed an "additional paper" that was attached to the tenancy agreement, acknowledging that she would pay "excess utilities" in the following amounts:

BC Hydro – amount of \$62.00 per month  
Fortis BC – amount of \$64.00 per month  
Water bill – amount of \$92.00

The Tenant submitted that the above utilities included utilities used by the barn and were not part of the tenancy agreement. She stated that in any event, AN should also be responsible for paying some of the “excess utilities”.

The Landlord stated that AN made her share of payments towards utilities used by the barn. Copies of receipts were provided in evidence.

The Tenant testified that she tried to pay the Landlord \$202.65 on February 14, 2016, by certified cheque, but the Landlord refused to accept it and returned the cheque to the Tenant.

The Landlord acknowledged that she returned the certified cheque to the Tenant and stated that she did so because the Tenant had erroneously written on the cheque that it was in payment of utilities for February, 2017.

### **Analysis**

Section 62 of the Act provides, in part:

**62** (1) The director has authority to determine

- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
- (b) any matters related to that dispute that arise under this Act or a tenancy agreement.

[Reproduced as written.]

In this case, I find that the parties had two agreements; a tenancy agreement and a “Horse Agreement”. I accept jurisdiction over the tenancy agreement, however, I find that the Act has no jurisdiction over the “Horse Agreement”.

Paragraph 3 on page one of the tenancy agreement provides that water, sewer, garbage collection, electricity, heat and cablevision are all included in rent. In the same paragraph is a box ticked “additional information” which provides “see attached paper”. Attached to the tenancy agreement are 3 pages. They are entitled “Utilities”, “Additional Information for Tenancy Agreement”, and “Horse Agreement”.

The Landlord did not dispute that there is one meter for all of the structures on the rental property, including the barn. There are three differing provisions with respect to utility payments:

1. Paragraph 3 of the tenancy agreement, which provides that utilities are included in rent;
2. The “attached paper” entitled “Utilities”, which provides that “excess utilities” are payable by the “tenant”; and
3. The “attached paper” entitled “Horse Agreement”, which provides that “hydro for water pump/water heaters to be divided by AN, JH and TH, the owners of the horses”.

I find that the utilities were included in rent with respect to the tenancy agreement.

I find that it is unclear (and therefore unenforceable) how the “excess utilities” are calculated in the paper entitled “Utilities”. There is only one meter and therefore it is not clear how the utilities could be divided up between the residence and the barn.

There may be additional utility charges with respect to utilities used by AN, JH and TH under the “Horse Agreement”, but any such claim that the Landlord may have under the “Horse Agreement” is not within the jurisdiction of the Residential Tenancy Act.

Therefore, the Landlord’s claim for unpaid utilities under the tenancy agreement is dismissed. I have found that any payment towards unpaid utilities is not within the Act’s jurisdiction and therefore I make no Order with respect to the disposition of the Tenant’s certified cheque in the amount of \$202.65.

The Landlord has not been successful in her application and I find that she is not entitled to recover the cost of the filing fee from the Tenant.

I Order that the Landlord return the security deposit and the pet damage deposit to the Tenant forthwith.

### **Conclusion**

The Landlord did not provide sufficient evidence that the Respondent JH was served with the Notice of Hearing documents and therefore her application against him is dismissed.

The Landlord’s Application for unpaid utilities, under the tenancy agreement, to and including January, 2017, is dismissed. The Landlord is not entitled to recover the cost of the filing fee from the Tenant.

I ORDER the Landlord to return the security and pet damage deposits to the Tenant forthwith. I hereby provide the Tenant with a Monetary Order in the amount of \$1,000.00 for service upon the Landlord in the event that the Landlord does not comply with my Order. The Monetary Order may be filed in the Provincial Court of British Columbia and enforced as an Order of that Court.

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 20, 2017

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Residential Tenancy Branch