



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are undisputed facts: The tenancy of the upper unit of a home started on September 1, 2015. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. The Landlord served the Tenant with two notices to end tenancy for unpaid utilities: one dated March 31, 2017 for \$465.00 in unpaid utilities and a second dated June 2, 2017 for \$755.01 in unpaid utilities. The Landlord did not give the Tenant any written demand for utilities owed prior to serving these notices on the Tenant.

The Landlord states that the Tenant originally signed a tenancy agreement for \$1,500.00 in monthly rent payable on the first plus utilities. The Landlord states that the Tenant also orally agreed to pay \$100.00 monthly for utilities to start as the Landlord did not know the costs of utilities. The Landlord states that the unit was purchased at the same time as the tenancy started and that the utility consumption was unknown. The

Landlord states that in October 2016 as the fixed term tenancy was no longer in effect there was no agreement and the Parties entered into an oral agreement for the Tenant to pay 50% of the total utilities and that the Landlord did collect this amount from that point onwards. The Landlord states that he does not have the records of payments owed and paid for this period of time at hand for the hearing. The Landlord states that the oral agreement came into effect as the fixed term tenancy ended.

The Tenant states that the tenancy agreement that was signed at the outset was for \$1,500.00 and it included utilities. The Tenant states that the Tenant also orally agreed to pay \$100.00 monthly for these utilities. The Tenant states that the Landlord's copy of the tenancy agreement is not the copy signed by the Tenant and that although the signature page of the Landlord's copy is correct the first two pages of that same agreement are different and that the Tenant never initialled any agreement to a fixed term. The Tenant points to his initials beside the security deposit clause to show that the initial by the fixed term is not his. The Tenant states that he has paid the full rent of \$1,500.00 and the \$100.00 monthly for the utilities to and including June 2016. The Tenant states that he has not paid any other amounts for utilities. The Tenant states that there was a previous tenant in place while the Landlord owned the house.

### Analysis

Section 46(6) of the Act provides that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and 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 to end tenancy for unpaid rent.

There is no dispute that at the outset of the tenancy the Parties agreed that the Tenant would pay a total of \$1,600.00 for rent that included all utilities. The Landlord did not dispute that the Tenant has paid this amount to and including June 2017. Given the Tenant's evidence showing his initials and considering that the Tenant did not move out of the unit I accept that the initials on the Landlord's copy of the tenancy agreement

beside the fixed term move-out clause are not the Tenant's initials. I also find that the tenancy was originally a fixed term that converted to a month to month tenancy at the end of the fixed term.

Even if it could be accepted that evidence of oral agreement can change a written agreement, and I do not accept such evidence, the Landlord did not provide any documentary evidence of the Tenant's payment of 50% of the utilities since October 2017. For these reasons I prefer the Tenant's evidence and find on a balance of probabilities that the tenancy agreement requires the Tenant to pay no more than \$1,600.00 in monthly rent and that this amount includes all utilities. I also find that the Landlord has not substantiated that any utilities are owed. As a result I find that the notices to end tenancy are not valid and that the Tenant is therefore entitled to their cancellations. The tenancy continues.

As the Tenant has been successful I find that the Tenant is also entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this entitlement.

### Conclusion

The notices to end tenancy are not valid and are cancelled.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court 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: July 06, 2017

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Residential Tenancy Branch