



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, OPR, OPC, MNR

### Introduction

This hearing was convened in response to an application by the Tenant and two applications by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on June 13, 2017, with an amendment made July 17, 2017 for:

1. An Order cancelling a 10 day notice to end tenancy - Section 46; and
2. An Order cancelling a one month notice to end tenancy - Section 47.

The Landlord applied on June 6, 2017 for:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent or utilities - Section 67.

The Landlord applied on August 2, 2017 for:

1. An Order of Possession - Section 55.

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

### Preliminary Matters

The Tenant states that the Landlord’s application does not set out his legal name and asks that it be corrected. The Landlord states that the application sets out the Tenant’s name as contained in the tenancy agreement and that the Tenant is referred to by that name. The Landlord requests that the applications be amended to correct the Tenant’s name to its legal name as provided by the Tenant. The Tenant does not disagree to

this amendment. Given the Landlord's request to amend the name of the Tenant on the application I make this amendment.

The Tenant noted at the onset of the tenancy that the Landlord's evidence package recently received is confusing and mixed up. The Tenant indicates that he cannot respond to any of the claims by the Landlord in either of the applications due to the confusion. It is noted that the evidence package containing 103 combined pages provided to the RTB by the Landlord on August 4, 2017 appears to contain evidence to support the claims for both of the Landlord's applications however the applications themselves are confusing and the relevant evidence in this package for each application it is not readily apparent. The evidence package is not numbered. The Landlord clarified that the application made on June 6, 2017 is in relation to only unpaid utilities. The Landlord clarified that the application made on August 2, 2017 is only in relation to an order of possession based on a notice to end tenancy for cause. The Landlord confirmed that there is no claim for unpaid rent. The Landlord confirms that the evidence package of August 4, 2017 contains evidence to support both applications and that evidence to support the application made on June 6, 2017 was also provided in advance of the August 4, 2017 application.

Rule 2.5 of the RTB Rules of Procedure provides that to the extent possible at the time of submitting an application the applicant must submit documentary evidence to be relied upon at the hearing. Rule 3.7 of the RTB Rules of Procedure provides that evidence must be readily identifiable, organized, clear and legible. As the Landlord's evidence package of August 4, 2017 contains evidence for the June 6, 2017 application, I consider this evidence to be late in relation to the claims in the June 6, 2017 application. Further I accept that the combined and unnumbered evidence package is confusing and I find this to be prejudicial to the Tenant. As a result I decline to consider any of the evidence contained in the August 4, 2017 evidence package in relation to the June 6, 2017 application for unpaid utilities. I restrict the evidence for this application to the evidence that was provided for this application prior to August 4, 2017.

The Tenant states that he is moving out of the unit on August 31, 2017 and the Landlord states that she would agree to end the tenancy for that date. As a result the following agreement was made:

**The Parties mutually agree as follows:**

- 1. The tenancy will end and the Tenant will move out of the unit no later than 1:00 p.m. on August 31, 2017;**
- 2. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the mutual agreement reached during the Hearing, I find that the Parties have settled their dispute as recorded above. To give effect to this agreement I grant the Landlord an order of possession effective 1:00 p.m. on August 31, 2017.

The Landlord confirms that the only matter left to resolve is the claim for unpaid utilities.

Issue(s) to be Decided

Is the Landlord entitled to unpaid utilities?

Background and Evidence

The tenancy started on May 1, 2015. Rent of \$1,000.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit.

The Landlord states that prior to signing the tenancy agreement the Tenant verbally agreed to pay 75% of the hydro and gas provided by the Landlord. The Landlord confirms that this term was not included in either the addendum or the tenancy agreement. The Landlord states that the agreement is evidenced by a letter to the

Tenant dated April 11, 2017. I note that the letter dated April 11, 2017 indicates that \$1,019.93 is owed and that the payments are a month behind. The Landlord states that the Tenant paid the utilities until about 4 months ago and then stopped. The Landlord claims \$1,099.50. The Landlord provided no copies of bills to support the amount claimed.

The Tenant states that the Landlord only brought up the payment for utilities after the tenancy agreement was signed. The Tenant states that he never agreed to pay anything beyond what was stated in the tenancy agreement. The Tenant states that the tenancy agreement addendum contains a provision for utilities and I note that this provision is stated as follows: "If your use of the Rented Premises results in more than normal use of utilities as determined by us acting reasonably, you agree to pay such additional charges as are determined." The Tenant states that the Landlord never provided him with bills and the Tenant only paid some bills when the Landlord told him he was over the amount provided for in the tenancy agreement. The Tenant states that he was told that if he did not pay for the utilities he would have to move. The Tenant states that he thought he had no other choice but to pay. The Tenant states that he repeatedly requested bills from the Landlord and stopped paying as demanded because the Landlord failed to provide bills. The Landlord states that the Tenant was never told to move and that the Tenant would ask how much he owed and would pay as requested. The Landlord states that no billing detail is provided unless asked for. The Tenant states that he absolutely asked for bills and they were never provided.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. In a claim for damage or loss under the Act,

regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the costs being claimed have been incurred or established.

Given the provision in the written tenancy agreement addendum I find that there was no agreement with the Tenant to pay anything other than as stated in the tenancy agreement addendum. Further, I find the utility provision in the tenancy agreement addendum to be vague and therefore unenforceable. Finally, given the lack of bills I find that the Landlord has not substantiated the utility usage costs claimed. For these reasons I dismiss the claim for unpaid utilities.

### Conclusion

I grant the Landlord an order of possession effective 1:00 p.m. on August 31, 2017.

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: August 17, 2017

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Residential Tenancy Branch