



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRAIN INJURY SOCIETY (SOBIS )  
And [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR ERP MT OLC PSF  
                             CNR ERP MT OLC PSF

### Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenants. The first application names one tenant and seeks more time than prescribed to dispute a notice to end the tenancy; an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord comply with the *Act* or the tenancy agreement; and for an order that the landlord provide services or facilities required by the tenancy agreement or the law. The second application names 2 tenants and seeks the same relief.

The first-named tenant attended the hearing with a Legal Advocate, and advised that the second-named tenant is the 18 year old daughter of the first-named tenant. An agent for the landlord also attended, accompanied by an observer who did not testify or take part in the hearing. The tenant and the landlord's agent each gave affirmed testimony, and the parties were given the opportunity to question each other and give closing submissions.

During the course of the hearing, the tenant's Legal Advocate advised that the landlord has not been served with the hearing package for one of the 2 applications made by the tenant, and I dismiss that application in its entirety. With respect to the other application, the tenant withdrew the application for an order that the landlord comply with the *Act* or the tenancy agreement, and withdrew the application for an order that the landlord provide services or facilities required by the tenancy agreement or the law.

Also, during the course of the hearing, it was determined that the tenant had not provided the landlord with any evidentiary material. The Rules of Procedure require that any evidence that a party wishes to rely on must be provided to the other party, and since the tenant has not provided evidence to the landlord, I decline to consider it. All evidence of the landlord is considered in this Decision.

The electronic record for this dispute included evidentiary material that the parties agree have nothing to do with the application before me or with respect to this tenancy, and I find that evidence has been filed incorrectly and is not considered in this Decision.

### Issue(s) to be Decided

The remaining issues to be decided are:

- Has the tenant established a compelling reason to permit more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to make emergency repairs for health or safety reasons?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on March 1, 2008 and the tenant still resides in the rental unit. Rent is subsidized, and the tenant's share is \$468.00 per month and there are no rental arrears. At the outset of the tenancy, the landlord at the time collected a security deposit from the tenant in the amount of \$300.00 which is held in trust by the current landlord, and no pet damage deposit was ever collected. The rental unit is a townhouse in a complex and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the City has its own electrical utility, and if a tenant is delinquent paying the bills, a landlord can accept responsibility. The landlord contacted the City to find out the amount that was delinquent and did not authorize that the landlord would take that responsibility due to the tenant's payment history.

On November 7, 2017 the landlord provided the tenant with a letter that advises the tenant that the utility account has gone into arrears which is contrary to the tenancy agreement and requests the tenant provide proof of payment in full by November 14, 2017. The landlord has never been advised whether or not the tenant paid the utilities.

On December 8, 2017 the tenant left a message with the landlord saying that the power was turned off and that the landlord had to contact the City to have it turned back on. The landlord did not do so, however someone else unknown to the landlord gave the City Utility authorization for the landlord to assume responsibility if the tenant didn't pay the bill or the reconnection fee. That resulted in the power being turned back on in the rental unit.

On December 11, 2017 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, by posting it to the door of the rental unit. A copy of the first page of a 2-page notice has been provided as evidence for this hearing and it is dated December 11, 2017 and contains an effective date of vacancy of December 24, 2017 for unpaid utilities in the amount of \$237.43 following a written demand on December 11, 2017. The landlord had given the tenant another letter with the notice and a copy has been provided for this hearing. It again asks the tenant to provide proof of payment of utilities in full, however the tenant has still not done so and the landlord is not certain whether the amount has yet been paid. A copy of a string of emails has been provided as evidence for this hearing dated December 11, 2017 between an agent of the landlord and an agent for the City, wherein the City advises that the total arrears amount to \$162.88, and of that \$60.90 was due on October 23, 2017 and \$101.98 was due on November 22, 2017. It also states that if the tenant had paid the \$60.90 by December 5, or a minimum payment of \$30.00, there would have been no disconnection. The total arrears of \$162.88 and re-connection fee of \$74.55 (total \$237.43) are outstanding and the City has made arrangements with the tenant to have it paid by December 15, 2017.

The landlord's agent believes the tenant paid \$100.00 of the bill to the City, however by the end of December, 2017 there was still a balance owing.

The landlord has tried to work with the tenant to keep the utilities paid up, and is currently in the process of changing all windows in the complex to hopefully reduce the electrical bills for all tenants. The landlord also had an inspection completed on the tenant's meter at some cost to the landlord, and no fault was found.

The landlord also served the tenant with a One Month Notice to End Tenancy for Cause and the landlord applied for an Order of Possession and to join that hearing with this hearing, but was told it could not be done. A hearing is scheduled for March 8, 2018.

With respect to the tenant's application for emergency repairs, the landlord's agent testified that the front door of the rental unit has been damaged, but the tenant never told the landlord about it. The landlord's agents found out and a new door has been ordered, but it's not a standard size and the landlord is still awaiting the new door. In the meantime, the landlord has ensured security to the rental unit by placing plywood over the doorway. There is another entrance to the rental unit, and the landlord intends to install it as soon as it's received.

The landlord's agent disagrees that the tenant should be granted more time than prescribed to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and testified that the tenant served the hearing package upon the landlord's agent personally on January 10, 2018. The notice to end the tenancy was served on December 11, 2017, a

month earlier. The “Details of Dispute” on the Tenant’s Application for Dispute Resolution states that due to Christmas and such the tenant was not able to get an appointment with her Legal Advocate. However, the landlord believed the tenant intended to move out on January 31, 2018 in accordance with the One Month Notice to End Tenancy for Cause and the landlord has already commenced arranging the move-out condition inspection.

**The tenant** testified that she had arrangements with the City with respect to paying the electrical bill over the years. Rates have gone up and the tenant lost her job, but a new rule by the City says that it has to be cleared by the landlord. The tenant has no idea who may have authorized it through the City however the tenant has paid all arrears, having paid \$289.00 yesterday. The tenant had paid \$100.00 to the City on November 22, 2017 and another \$100.00 on December 22, 2017, and also disputed that the electricity had been cut off because the City’s letter said a minimum of \$30.00 was required. The landlord’s demand was unreasonable.

Once receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant was stressed out and finally got an appointment with the Legal Advocate, and didn’t realize there was a time limit to dispute it. However, the tenant left a voice mail with the landlord and made arrangements with the City for payment.

With respect to emergency repairs, the tenant testified that about 6 months ago the door got kicked in. The tenant contacted police and the maintenance person for the complex. It doesn’t lock so the landlord put plywood over it and the tenant has been without a front door for months. The units on both sides of this rental unit have had new doors and windows but this rental unit was skipped. A contractor told the tenant it would be done in February after the tenant moves out, but it should have been a priority.

### **Closing Submissions of the Landlord’s Agent**

The tenant did not dispute the notice to end the tenancy within 5 days as required, and therefore the landlord seeks an Order of Possession. The landlord has worked with the tenant throughout the year about keeping the utilities up-to-date but the tenant was still delinquent and made partial payments only.

### **Closing Submissions of the Tenant’s Legal Advocate**

The utilities are between the City and the tenant, not with the landlord. The tenant has caught up all arrears, and the City has agreed without the involvement of the landlord, and therefore the notice to end the tenancy should be cancelled.

### Analysis

Firstly, with respect to the tenant's application for more time than prescribed to dispute a notice to end the tenancy, I have considered the testimony of the parties. The tenant testified that she was stressed out and finally got an appointment with her Legal Advocate. I also note that the tenant filed 2 applications to dispute a 10 Day Notice to End Tenancy for Unpaid Rent given by the landlord and claiming all of the same relief in both applications. The landlord's agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was served by posting it to the door of the rental unit on December 11, 2017 which is deemed to have been served 3 days later, or December 14, 2017. The tenant was to apply for dispute resolution within 5 days, or by December 19, 2017. The record also shows that a notice of hearing for that dispute was generated on December 19, 2017. I have dismissed that application because the tenant didn't serve the landlord, however it's clear to me that the tenant was confused and stressed. The evidence has been very confusing and difficult for me to follow, considering also that a lot of evidence was uploaded to this dispute that had nothing to do with the parties. I find that it would be an injustice to not allow more time to dispute the Notice considering the circumstances, and the tenant's application is allowed.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. The *Act* also permits a landlord to treat unpaid utilities as unpaid rent 30 days after written demand is given for the payment of the utilities if the tenancy agreement requires the tenant to pay utility charges to the landlord. In this case, I have reviewed the tenancy agreement which simply states that electricity and heat are not included in the rent. There is no term requiring the tenant to pay those charges to the landlord. Therefore, I find that the landlord has not established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 11, 2017 was issued in accordance with the *Residential Tenancy Act* and I hereby cancel it and the tenancy continues.

The parties agree that the rental unit is in need of a door. The parties disagree with respect to what notice was given to the landlord about it, however the landlord's agent testified that it's not a standard door so one has been ordered. The landlord doesn't know when it will be received. I accept that testimony, and I order the landlord to replace the door and remove the plywood immediately upon its receipt.

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 11, 2017 is hereby cancelled and the tenancy continues.

I hereby order the landlord to replace the door to the rental unit immediately upon its receipt.

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: January 25, 2018

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Residential Tenancy Branch