



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 460 PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPU, MNR, FF

### Introduction

This hearing convened as a result of Landlords' Application for Dispute Resolution wherein the Landlords requested an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 5, 2017 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference on January 4, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

The Landlord's agent confirmed that the address of the rental unit as noted on the Application for Dispute Resolution was incorrect as the numbers were inverted. A review of the tenancy agreement and the Notice confirms the correct address. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential*

*Tenancy Branch Rules of Procedure*, I amend the Landlord's application to correctly note the address of the rental unit.

### Issues to be Decided

1. Has the Tenant breached the *Act* or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord's agent testified as to the terms of the tenancy as follows: the tenancy began August 1, 2017; monthly rent was payable in the amount of \$2,000.00; and the Tenant paid a security deposit in the amount of \$1,000.00.

The Tenant failed to pay rent for October 2017; as a result on October 5, 2017 the Landlord issued the Notice.

The Landlord's agent confirmed that the Tenant also failed to pay \$42.00 in utilities. Paragraph 6 of the agreement provided that the Tenants were responsible for paying the utilities; for greater clarity I reproduce that section as follows:

**6. UTILITIES** - The tenant agrees to being solely responsible for paying for the following utilities for the rental property. The tenant further agrees to connecting and paying 60% of total bill for mandates services such as Electricity with BC Hydro and water bill. Tenant agrees to pay 60% ( \$42 ) of potential water bill cost of \$ 70. If bill comes out to be less then the estimated \$70 then the tenant shall be reimbursed with the difference. If the bill comes out more then the estimated \$70 then the tenant agrees to pay the difference in price. In addition, any optional services such as telephone service, internet service and TV Services will be the tenants sole responsibilities for connecting and full payments of the services.

Also introduced in evidence was a copy of a demand for payment of the utilities as well as copies of the invoices.

The Landlord's agent testified that the Notice was personally served on October 5, 2017. The Landlord's agent confirmed that the Tenant did not make an application to dispute the Notice or pay the outstanding rent within the five days stipulated by section 46 of the *Residential Tenancy Act*.

The Landlord's agent also testified that the Tenant failed to pay rent for November 2017, December 2017 and January 2018 and failed to pay the \$42.00 per month for utilities.

In the within hearing the Landlord sought monetary compensation for the following:

October 2017 rent	\$2,000.00
October 2017 utility	\$42.00
November 2017 rent	\$2,000.00
November 2017 utility	\$42.00
December 2017 rent	\$2,000.00
December 2017 utility	\$42.00
January 2018 rent	\$2,000.00
January 2018 utility	\$42.00
filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$8,268.00</b>

In response to the Landlords' claims the Tenant testified as follows. She confirmed that she did not pay the rent for October, November, December and January 2018 nor did she pay the \$42.00 per month for the utilities.

The Tenant further confirmed that she did not pay the rent nor did she make an application for dispute resolution within five days of receipt of the 10 Day Notice. She claimed the Landlord said it was "fine" and that she could pay her rent on October 15, 2017. Despite this claim, she did not pay the outstanding rent on October 15, 2017, claiming the Landlord refused her request to have a co-tenant to help her pay the rent.

The Tenant stated that the Landlord was to pay 40% of the hydro utility and that she was intending to bring her own application for monetary compensation from the Landlord.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Consequently and pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of **\$8,268.00** comprised of outstanding rent and utilities in the amount of \$2,042.00 per month for the months October, November and December 2017 and January 2018 as well as the \$100.00 fee paid by the Landlord for this application. I therefore grant the Landlord a Monetary Order pursuant to section 67 of the *Act* for the balance due of **\$8,268.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy within the five days required by the *Act*; consequently, and pursuant to section 46(5), the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and is granted a Monetary Order in the amount of **\$8,268.00**.

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 04, 2018

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Residential Tenancy Branch