



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPU, MNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of possession based on unpaid rent and unpaid utilities pursuant to sections 46 and 55;
- a monetary Order for unpaid rent and utilities pursuant to section 67 and 72; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's amended application increased the monetary claim for unpaid rent and utilities pursuant to sections 67 and 72 of the *Act*.

Both parties agreed that the landlord served the dispute resolution package on the tenant in person on February 17, 2018. I find that the tenant was served with the dispute resolution package on February 17, 2018, in accordance with section 89 of the *Act*.

The landlord testified that he served the tenant the notice of dispute resolution amendment package and written evidence package by registered mail on March 28, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the amendment package and evidence but could not confirm the date of receipt. I find that the tenant was deemed served with this package on April 2, 5 days after its mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Both parties agreed to amended the application to list only tenant T.L.C. as the respondent as the other parties originally listed as respondents did not sign the tenancy agreement.

Issue(s) to be Decided

- Is the landlord entitled to an Order of possession for unpaid rent and/or unpaid utilities pursuant to sections 46 and 55 of the *Act*?
- Is the landlord entitled to a monetary Order for unpaid rent and or unpaid utilities pursuant to section 67 of the *Act*?
- Is the landlord entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2016 and is currently ongoing. Monthly rent in the amount of \$2,250.00 is payable in cash on the first Sunday of each month. The tenant is responsible for the cost of the BC Hydro and Fortis BC ("utility") bills. A security deposit of \$1,200.00 and a pet deposit of \$1,200.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The landlord agreed to deduct rent for the month of January 2018 from the security and pet deposits with the remainder of the deposits to be put towards outstanding utility bills. The utility accounts are in the landlord's name. Rent for February 2018 was due on Sunday, February 4<sup>th</sup>, the first Sunday of the month. On February 4<sup>th</sup>, 2018, the landlord personally served the tenant's partner, witness W.D., who was living with her at the time, with the 10 Day Notice to End Tenancy ("10 Day Notice"). The 10 Day Notice had a stated effective date of February 28, 2018.

The landlord testified that as per the Amendment he made to this Dispute Resolution proceeding, he would like to receive a monetary order for January's rent and to leave the security and pet damage deposit intact in case there are damages to the rental property after the tenant leaves. The landlord further testified that tenant has not paid rent in the amount of \$2,250.00 per month for the months of February, March and April 2018.

The tenant opposes the landlord's request to leave the security and pet deposit intact until the end of the tenancy. The tenant testified that she paid rent for February some

time after receiving the 10 Day Notice. The tenant testified that she has not paid rent for March and April 2018 and will be moving out at the end of April 2018.

The landlord provided into evidence the following utility invoices which he testified the tenant has not paid:

<b>Invoice</b>	<b>Date Range Service Provided</b>	<b>Amount</b>
BC Hydro	September 16 to November 16, 2017	\$155.89
BC Hydro	November 17 to January 16, 2017	\$223.71
BC Hydro	January 17 to March 16, 2017	\$217.05
Fortis BC	October 16 to November 15, 2017	\$107.98
Fortis BC	November 15 to December 15, 2017	\$132.57
Fortis BC	December 15, 2017 to January 17, 2018	\$213.62
Fortis BC	January 17 to February 15, 2018	\$146.68
Fortis BC	February 15 to March 15, 2018	\$154.87
Fortis BC	March 15 to April 17, 2018	\$121.56
<b>Total:</b>		<b>\$1,473.93</b>

The tenant testified that she paid her utility bills in 2017 and only stopped paying them in January 2018. The tenant further testified that she paid the landlord with cheques for the 2017 utility bills. At the time of the hearing the tenant had not submitted negotiated cheques into evidence. I gave the tenant 24 hours to submit negotiated cheques to prove her payment of the utility bills. At that time, the landlord requested he be able to upload the most recent utility bill that had come in for the period of March 15 to April 17, 2018, which I allowed.

The tenant submitted into evidence the following negotiated cheques from herself to the landlord:

<b>Date</b>	<b>Comment on Cheque</b>	<b>Amount</b>
September 5, 2017	None	\$29.11
September 5, 2017	Hydro	\$191.69
October 1, 2017	Hydro/Fortis	\$235.68
November 5, 2017	Recycle/Fortis	\$101.31
Fortis BC	November 15 to December 15, 2017	\$132.57

## Analysis

### Service of 10 Day Notice to End Tenancy

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. In this case, rent was due on the first Sunday of the month, that being February 4, 2018. The landlord was therefore permitted to give notice to end the tenancy any day after February 4, 2018. The landlord however, gave notice on February 4, 2018 which was 1 day too early. Rent could not be considered unpaid or late until February 5, 2018. I therefore find that the 10 Day Notice served on February 4, 2018 to be invalid and of no force or effect. Accordingly, I dismiss the landlord's application for an Order of possession for unpaid rent and/or utilities without leave to reapply.

### Unpaid Rent

Based on the testimony of the landlord and the tenant I find that both parties agreed to use the tenant's security and pet deposit to pay the January 2018 rent in full with the remaining proceeds to go to utility bills for January 2018 as outlined in the calculation below:

$\$2,400.00$  (security and pet deposit) -  $\$2,250.00$  (January rent) =  $\$150.00$  (credit to be applied to utilities)

I find that it would be unfair to the tenant to have a third party come in now and rescind an agreement entered into by both parties just three months ago. Pursuant to section 72 of the *Act*, I find that the January rent is paid in full and \$150.00 is to be deducted from monies owed for utility bills. I find that the tenant is not entitled to the return of her security deposit or pet damage deposit at the end of the tenancy.

In regard to February's rent, there is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlord's claim for February's rent, and considering the tenant's testimony that she paid the landlord February's rent in full, the burden of proving that rent was not paid, rests with the landlord. The landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate his claim that the tenant did not pay February rent. I find that the landlord has not proven his claim for February's rent.

Both parties agreed that the tenant did not pay rent for March and April 2018. I find that the tenant owes a total of \$4,500.00 for March and April's rent.

### Unpaid Utilities

There is a general legal principle that when a tenant regularly provides payments via cheque, there is an expectation that a tenant will be able to produce copies of those cheques that have allegedly been made. When a tenant is unable to provide a copy of the cheque for an alleged payment, it lends credibility to a landlord's claim that a payment has not been made.

The tenant testified that she paid the utilities from September to December 2017 via cheque and in support of this testimony she entered into evidence four negotiated cheques from herself to the landlord. I find that the dates on all of the cheques provided by the tenant are earlier than the end date service was provided on all of the invoices submitted by the landlord. All of the cheques from the tenant to the landlord were dated before the invoices would have been made available for payment. The fact that the tenant has not been able to provide copies of negotiated cheques from herself to the landlord after the invoices were made available lends credence to the landlord's testimony that the invoices have not been paid. I find that the tenant did not pay the invoices submitted by the landlord as per the tenancy agreement.

### Conclusion

I issue a monetary Order under the following terms, which allows the landlord to recover damages for unpaid rent and utilities and the filing fee for this application:

<b>Item</b>	<b>Amount</b>
March Rent	\$2,250.00
April Rent	\$2,250.00
BC Hydro: September 16 to November 16, 2017	\$155.89
BC Hydro: November 17 to January 16, 2017-	\$223.71
BC Hydro: January 17 to March 16, 2017	\$217.05
Fortis BC: October 16 to November 15, 2017	\$107.98
Fortis BC: November 15 to December 15, 2017	\$132.57
Fortis BC: December 15, 2017 to January 17, 2018	\$213.62
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Fortis BC: February 15 to March 15, 2018	\$154.87
Fortis BC: March 15 to April 17, 2018	\$121.56
Less credit from remainder of security and pet deposits	-\$150.00
Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$5,923.93</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for an Order of possession for unpaid rent and/or utilities without leave to reapply.

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 23, 2018

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Residential Tenancy Branch