



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNR MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 30, 2018, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on May 1, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlords attended the hearing on their own behalves. All parties giving evidence provided a solemn affirmation.

The Tenant testified that the Application package and an Amendment to an Application for Dispute Resolution were served on the Landlords by registered mail on May 2, 2018. The Landlord acknowledged receipt of these documents. The Landlords submitted documentary evidence in response to the Application. L.C. testified that the Landlords' documentary evidence was served on the Tenant in person on June 3, 2018. The Tenant acknowledged receipt of these documents. No further issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Further, I find that the Tenant's monetary claim is not sufficiently related to the application to cancel the 10 Day Notice. Accordingly, I find it appropriate to exercise my discretion to dismiss the Tenant's monetary claim, with leave to reapply at a later date.

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on December 1, 2017. Rent in the amount of \$2,000.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,000.00 and a pet damage deposit of \$500.00, which the Landlord holds.

The tenancy agreement confirmed utilities were not included in rent. L.C. testified it was the Landlords' expectation that utilities – BC Hydro, Fortis, and water – would be placed in the Tenant's name. They were not. The Landlord paid the utilities on behalf of the Tenant to avoid them from being disconnected.

Further, L.C. testified that the Tenant did not pay utilities after being issued two written demands for payment. The first written demand, dated February 28, 2018, was served on the Tenant by registered mail. At that time, \$484.55 was outstanding. The second written demand, dated April 26, 2018, was sent to the Tenant via email. At that time, \$785.83 remained outstanding. Copies of the written demands were submitted with the Landlords' documentary evidence.

As utilities remained unpaid, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 24, 2018 (the "10 Day Notice"). The Application confirmed receipt of the 10 Day Notice on April 25, 2018.

In reply, the Tenant acknowledged that utilities have not been paid. The Tenant testified she did not understand how the amounts presented in the demand letter and email were calculated, despite having receipt of copies of invoices. When asked why she did not seek clarification from the Landlords after receipt of the first demand letter, the Tenant advised there had been a communication breakdown related to a dispute over snow removal at the rental property. Further, the Tenant suggested she was unsure how to put utilities in her own name and suggested the Landlords bore some responsibility to provide her with information to help her do so.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49(6) of the *Act* states:

*If*

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and*
- (b) 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 under this section.*

[Reproduced as written.]

In this case, the Tenant acknowledged, and I find, that she did not pay utilities after receipt of written demands from the Landlords, dated February 28 and April 26, 2018. In addition, I do not accept the Tenant's testimony that she was unsure of the amount owed or how to clarify the amount outstanding. Indeed, the first written demand letter was issued on February 28, 2018, giving her ample opportunity to seek clarification.

Although the Landlords anticipated the Tenant would place utilities in her name, the Tenant did not. Not wanting the utilities to be disconnected, the Landlords paid the utility charges and sought reimbursement from the Tenant. I find the Landlords issued written demands for payment and were entitled to treat unpaid utility charges as unpaid rent. However, as acknowledged by the Tenant, utility charges remain unpaid.

Therefore, I find the Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55(1) of the *Act* requires that I grant an order of possession in favour of the Landlords. In this case, I have reviewed the 10 Day Notice and find that it complies with section 52 of the *Act*. Accordingly, I grant the Landlords an order of possession, which will be effective two (2) days after service on the Tenant.

### Conclusion

Pursuant to s. 51(1) of the *Act*, the Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenant is granted leave to reapply for the monetary relief sought at a later date. This is not an extension of any statutory deadline.

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: June 18, 2018

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Residential Tenancy Branch