



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the Tenants: CNR, FFT  
For the Landlord: MNRL-S, OPU, FFL

### Introduction

This hearing dealt with Applications for Dispute Resolution (“Applications”) by both Parties seeking remedy under the *Residential Tenancy Act* (“Act”). The Landlord requested a monetary order for damages for unpaid utilities, to retain all or part of the tenants’ security deposit, for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 6, 2018 (“10 Day Notice”), and to recover the cost of the filing fee. The Tenants requested the cancellation of the 10 Day Notice, and to recover the cost of the filing fee.

The Landlord’s daughter, JT, and Tenants, CB and RB, attended the teleconference hearing and gave affirmed testimony. During the hearing, the Parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

At the outset of the hearing that Parties confirmed that they had received both the application and the documentary evidence from the other Party and that they had the opportunity to review the application and documentary evidence prior to the hearing. As a result, I find there were no service issues.

### Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing. The Parties also confirmed their understanding that the decision would be emailed to both Parties and that any applicable orders would be emailed to the appropriate Party.

The Agent stated that the monetary claim was being reduced from \$6,299.38 to \$2,075.72; however, the Landlord failed to provide a monetary breakdown of the reduced amount of \$2,075.72. As a result, the Agent was advised during the hearing

that the Landlord's monetary claim was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, as their application for dispute resolution did not provide sufficient particulars, as is required by section 59(2)(b) of the *Act*. The Landlord is at liberty to re-apply as a result, but is reminded to include full particulars of their monetary claim when submitting their application in the "Details of Dispute" section of the application. Furthermore, when seeking monetary compensation, applicants are encouraged to use the Monetary Order Worksheet (Form RTB-37) available on the Residential Tenancy Branch website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca), under "Forms". The amount listed on the monetary worksheet being claimed should also match the monetary amount being claimed on the application.

#### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the 10 Day Notice?
- Is the Tenant entitled to an order cancelling the 10 Day Notice?
- Is either Party entitled to be reimbursed for the filing fee?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on December 1, 2013, with monthly rent of \$1,600.00 being due on the first day of each month. The Tenants paid a security deposit of \$800.00 and a pet deposit of \$500.00 at the start of the tenancy, which the Landlord continues to hold and which the Landlord has claimed against in their Application.

The tenancy agreement sets out which Party is responsible for providing which services as part of the monthly rent. The Parties checked boxes to indicate which services/features are included in the rent. The boxes that are not checked - not included in the rent - include water, electricity, and heat. The Parties agreed that this is what the tenancy agreement says, although they disagree on how to interpret the services included in the rent. The Parties signed the tenancy agreement on November 17, 2013.

#### Landlord's Claim

The Landlord applied for an order of possession for unpaid utilities, based on the 10 Day Notice the Landlord served on the Tenants on November 6, 2018. In the 10 Day Notice, the Landlord claimed that the Tenants owe \$6,299.38 in unpaid utilities.

#### Tenants' Claim

The Tenants dispute that they owe the Landlord anything for the utility bills. The Tenants said in the hearing that when negotiating the monthly amount payable for the rental unit that the Landlord initially asked for \$1,200.00, and wanted the Tenants to pay the water bill. The Parties agreed that there was confusion about whether the Landlord would be able to put the water bill in the Tenants' names. The Tenants said that the rent was raised to \$1,600.00 in order to cover the approximate monthly cost of the water bill. The Landlord said she did not agree with this interpretation of the tenancy negotiations.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find the following.

First, in terms of utility bills, if a tenant is the only occupant of a rental unit and the tenancy agreement does not include utilities in the monthly rent, it is appropriate to put any utility bills owing by that party in the tenant's name; however, if there are multiple units in the building(s), it is appropriate to put the utilities in the landlord's name and for the landlord to provide a copy of each utility bill to the respective tenants, as they are issued by the utility company, along with the Landlord's demand for payment of each bill.

The Landlord failed to provide any evidence that the Landlord issued a demand for payment of the \$2,075.72, and waited at least 30 days in accordance with section 46(6) of the *Act*:

46(6) 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.

Given the evidence before me, I find that the Landlord has not provided an evidentiary basis to support the 10 Day Notice.

Accordingly, I cancel the 10 Day Notice due to insufficient evidence to support that it is valid. As a result, the 10 Day Notice is of no force or effect. As they were successful in this matter, I grant the filing fee to the Tenants.

I grant the Tenants' a one-time rent reduction from a future month's rent pursuant to section 67 and 72 of the *Act* in the amount of \$100.00, in full satisfaction of the recovery of the cost of the filing fee.

As the Landlord was not successful, I do not grant the Landlord the filing fee.

### Conclusion

I refuse to hear the Landlord's monetary claim, as noted above, pursuant to section 59 of the *Act* . The Landlord is at liberty to reapply for the monetary claim.

The 10 Day Notice is cancelled and is of no force or effect.

The Tenants' application is successful. I also order that the Tenants may reduce their January 2019 rent by \$100.00 in full satisfaction of the recovery of the filing fee pursuant to section 72 of the *Act*.

The decision will be emailed to the Parties as noted above.

This decision is final and binding on the Parties, unless otherwise provided under the *Act*, and 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: December 21, 2018

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Residential Tenancy Branch