



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0821149 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL, OPU, FFL  
                              CNR, DRI, FFT

### Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Landlord applied for monetary compensation for unpaid utilities, and for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”). The Tenant initially applied to dispute a rent increase and on May 17, 2019 filed an amendment to cancel a 10 Day Notice. Both parties also applied for the recovery of the filing fee paid for each Application for Dispute Resolution.

An agent for the Landlord (the “Agent”) and the Tenant were both present for the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Landlord’s application and a copy of the Landlord’s evidence. The Agent confirmed receipt of the initial Notice of Dispute Resolution Proceeding package regarding the Tenant’s application to dispute a rent increase. However, the Agent stated that he did not receive the second package regarding the Tenant’s amendment to cancel the 10 Day Notice.

The Tenant confirmed that the second package was sent by registered mail to the Landlord’s address and provided a photo of the envelope in evidence which shows that the package was returned to the Tenant. The Agent stated that as the mail was addressed to him and not to the company name of the Landlord, it was addressed incorrectly as he is not able to receive mail at the Landlord’s address. The Agent confirmed that the address used by the Tenant was the correct mailing address for the Landlord.

However, I find that the Tenant served this package by registered mail in accordance with Section 89 of the *Act*. Section 89(1)(c) allows for service by registered mail as follows:

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord

The definitions provided under Section 1 of the *Act* defines a “landlord” as inclusive of an agent who provides services on behalf of the Landlord. Therefore, I find the Agent’s failure to claim mail at the Landlord’s address or the Landlord’s failure to claim mail addressed to their agent that was delivered to their business address to be unreasonable. As such, I find that the Landlord was deemed served in accordance with Section 90 of the *Act*, despite not collecting the mail. Therefore, the Tenant’s amendment will be considered in this decision. I note that failure or neglect to accept registered mail is not a ground for review consideration under the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

#### Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to monetary compensation for unpaid rent?

Was the Tenant issued an illegal rent increase?

Should either party be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

#### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy began on January 15, 2012. Current monthly rent is \$500.00 and a security deposit of \$250.00 was paid at the start of the tenancy.

The Agent testified that on May 17, 2019 a 10 Day Notice was served to the Tenant by posting the notice to his door. The Tenant confirmed receipt of the 10 Day Notice on May 17, 2019, the same day he filed the amendment to dispute the notice. The 10 Day Notice was submitted into evidence and states that the Tenant has failed to pay \$541.16 in utilities following written demand on May 6, 2019.

The Agent stated that the Tenant has been provided letters regarding the unpaid utilities on March 15, 2018, April 17, 2019, May 6, 2019 and May 8, 2019. He noted that these letters were posted on the bulletin board in the building as well as taped to the Tenant's door or slid under the Tenant's door.

A copy of the letters were submitted into evidence. The letter dated March 15, 2018 is not addressed specifically to the Tenant and states that water and sewer costs for 2018 have increased to more than \$500.00 and provides the option to pay an additional \$50.00 per month instead of a lump sum payment.

The letter dated April 17, 2019 states that the water and sewer costs are now due for an amount of \$541.16 and that it may be paid in a lump sum or \$50.00 per month added to the rent payment. This letter was also not addressed specifically to the Tenant. The May 6, 2019 letter is the same as the letter from April 17, 2019 but includes the Tenant's apartment number and name.

The letter dated May 8, 2019 is addressed to the Tenant and states that the Tenant agreed to pay all utilities except for natural gas in clause 5 of the tenancy agreement. The letter further states that the amount of \$541.16 is now due and if not paid on or before May 15, 2019 a 10 Day Notice will be served.

Although the 10 Day Notice indicates that the demand letter for payment of utilities was provided on May 6, 2019, the Agent stated that it was the letter dated April 17, 2019 that was the demand letter.

The Agent referenced clause 5 of the tenancy agreement which states that the tenant is responsible for all utilities except for the natural gas for hot water.

The Agent stated that he is not sure what happened in previous years regarding the payment of utilities, but that he has been involved for the past couple of years and has asked for the payments from the residents of the building on an annual basis.

A copy of the utility bill was provided as evidence. The bill, from the city, was dated March 27, 2019 and was addressed to the Landlord. The invoice states that the payment is due by December 31, 2019. The invoice states the total owing for water and sewer costs for the entire building and the Agent noted that this amount is divided by the total number of units for a cost of \$541.16 owing from each Tenant on a yearly basis.

The Tenant provided testimony that he received the letters on May 6, 2019 and May 8, 2019, but had not received any previous letters. He noted that in the 7 years he has resided in this rental unit that May 6, 2019 was the first time he had been asked to pay water and sewer costs. The Tenant also stated that he does not look at the bulletin board but received the May 6 and May 8, 2019 letters when slid under his door.

The Tenant argued that if each resident was liable for these bills then it would have come up in previous years and that he would have been billed directly, instead of the Landlord being billed for the entire building. The Tenant stated that receiving the Landlord's evidence was the first time he had seen the actual utility bill. He also noted that the Landlord is charging based on the number of units, not whether the units are occupied. The Tenant also stated that not all of the building residents have been asked for payment of the water and sewer, which the Agent denied.

The Tenant applied to dispute a rent increase but stated that this may have been an error as he realizes it was not a rent increase but a request for utility payment. However, the Tenant stated his belief that he should not be responsible for the water and sewer utilities.

### Analysis

Regarding the Tenant's application to dispute a rent increase, the parties were in agreement that the rent had not been increased. Therefore, I dismiss the Tenant's application to dispute a rent increase, without leave to reapply. As stated by rule 2.2 of the *Residential Tenancy Branch Rules of Procedure*, the claims are limited to what is stated on the application.

Regarding the 10 Day Notice, I refer to Section 46(4) of the *Act* which states that a tenant has 5 days to dispute a 10 Day Notice or to pay the outstanding rent/utilities. As the Tenant received the 10 Day Notice on May 17, 2019 and applied to dispute the notice on the same day, I find that he applied within the timeframe provided under the *Act*. Therefore, the matter before me is whether the 10 Day Notice is valid.

As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove that a notice to end tenancy is valid is on the Landlord.

A 10 Day Notice may be served regarding unpaid utilities as outlined in Section 46(6) of the *Act*:

(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.

While the tenancy agreement does note that the Tenant is responsible for all utilities except for gas, I am not satisfied that a proper 30 day written demand letter was provided to the Tenant in accordance with Section 46(6)(b) of the *Act*.

The Landlord provided testimony that the letter dated April 17, 2019 was the demand letter, but the Tenant stated that this was never received. In the absence of any evidence that would confirm how this letter was served on the Tenant, I am not able to establish that it was served and received. I also note that posting on a bulletin board for the entire building is not a method of service under the *Act*.

I also do not find the letter dated May 6, 2019 and May 8, 2019 to be written demand letters as they did not provide the Tenant with 30 days to pay. The 10 Day Notice was served on May 17, 2019, which is less than 30 days after these two letters.

I also find the letters of April 17, May 6, and May 8, 2019 to be unclear regarding the request for utility payment. Some of the letters are not addressed specifically to the Tenant, do not outline what the utility charges are for, or do not indicate a payment due

date. If the Tenant did not receive a copy of the utility bill as he claimed, I also find this unreasonable, as a tenant has a right to see a utility bill that he is being asked to pay. A written demand letter for payment of utilities must be clear as to how much is owed, what it is for, when payment is due and provide notification that if the payment is not received in 30 days then a 10 Day Notice may be served. I did not find that any of the letters submitted into evidence met these requirements.

As I am not satisfied that the Landlord followed the proper process for ending a tenancy for unpaid utilities, I find that the 10 Day Notice is not valid. Therefore, the 10 Day Notice dated May 17, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Regarding the Landlord's claim for payment of the utilities, I find it unclear as to whether the amount owed by the Tenant is overdue. As stated on the invoice from the city, the payment is due by December 31, 2019, and I have insufficient evidence before me to determine when the Tenant was asked to pay the utility bill by.

I am also not satisfied as to how much the Tenant owes given that the bill is for the entire building and no evidence was provided as to whether consideration was given to the size or occupancy of each unit. I also find insufficient testimony and evidence from the Agent regarding why this utility bill was not previously charged to the Tenant in previous year and therefore, I am not satisfied that the Tenant is responsible for a portion of this bill. As such, based on insufficient evidence, I find that the Landlord has not met the burden of proof to establish that the Tenant has breached the *Act* by not paying the utility bill.

Therefore, the Landlord's application for monetary compensation is dismissed, without leave to reapply.

As the Tenant was successful with his application to cancel the 10 Day Notice, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the application. The Tenant may deduct \$100.00 from the next monthly rent payment as satisfaction of this fee.

### Conclusion

The Tenant's application to dispute a rent increase is dismissed, without leave to reapply. The Landlord's application is dismissed in its entirety, without leave to reapply.

The 10 Day Notice dated May 17, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: July 10, 2019

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Residential Tenancy Branch