



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, OLC, RP, PSF

### Introduction

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

- cancellation of the landlord's two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, dated August 19, 2019 ("cancelled 10 Day Notice") and dated September 20, 2019 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 3, 2019 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33; and
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 40 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

The landlord confirmed that he served the 10 Day Notice to the tenant on September 20, 2019 and the 1 Month Notice on August 3, 2019, both by posting to the tenant's rental unit door. The tenant confirmed receipt of the 10 Day Notice on September 20, 2019 and the 1 Month Notice on August 4, 2019, both by way of posting to her rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on September 20, 2019 and 1 Month Notice on August 4, 2019. The tenant confirmed that she filed her application to dispute the 1 Month Notice on August 15, 2019.

At the outset of the hearing, the landlord confirmed that his 10 Day Notice, dated August 19, 2019, was cancelled and of no force or effect. Accordingly, this hearing proceeded on the basis of the 10 Day Notice, dated September 20, 2019.

### Issues to be Decided

Should the landlord's 10 Day Notice or 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid utilities or cause?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law?

### Background and Evidence

Both parties agreed to the following facts. This tenancy began on September 1, 2018. Monthly rent in the current amount of \$1,220.00 is payable on the first day of each month. A security deposit of \$597.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession for unpaid utilities based on the 10 Day Notice and an order of possession for cause, based on the 1 Month Notice. The 10 Day Notice indicates an effective move-out date of October 5, 2019 and the 1 Month Notice

indicates an effective move-out date of September 6, 2019. The tenant disputes both notices.

The landlord stated that he issued the 10 Day Notice for unpaid utilities of \$106.41 due on August 17, 2019, pursuant to a demand letter, dated August 16, 2019, that he issued to the tenant. The landlord provided a copy of this letter and the utility bills for metered water, sewage, and garbage for the period from October 1, 2018 to June 30, 2019, showing an outstanding balance each month. The most recent bill, dated July 23, 2019, shows an outstanding balance of \$189.82, which the landlord claimed the tenant only paid a portion, leaving a current balance of \$106.41. The landlord confirmed that the utility bills are in his name and attached to the rental unit, except the tenant has the option to pay the City directly, which is what she has done in the past. The landlord said that when utility bills are unpaid by the tenant, they are added on to his property taxes at the end of each year.

The tenant agreed that she did not pay the full utilities each month, including for the most recent bill. She said that she would be willing to pay the outstanding amount to the landlord now. She claimed that she did not pay because she was never provided with garbage cans from the landlord, so she did not want to pay for garbage services of \$39.00 per month. She maintained that she paid the other amounts and she had receipts for same. She explained that she pays the City directly for these utilities.

Both parties agreed that the written tenancy agreement specifically excludes water, sewage disposal, and garbage collection from the monthly rent, as noted on page 2, section 3. Both parties agreed that this page was initialled by the tenant and the last page of the tenancy agreement was also signed by the tenant. The tenant said that the landlord's caretaker never explained the tenancy agreement to her. Both parties agreed that the written tenancy agreement addendum also did not include water, sewage or garbage utilities.

Both parties agreed that the landlord issued the 1 Month Notice for two reasons:

- *Tenant is repeatedly late paying rent.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord stated that the tenant repeatedly paid utilities late during this tenancy. The landlord crossed out “rent” and included “utilities” in the above reason on the notice. He said that the tenant’s rent cheque for October 2018 was returned for insufficient funds and the tenant was late paying the full amount of utilities for the April and July 2019 bills.

The tenant disputed that her October 2018 rent was returned for insufficient funds, claiming that she pays rent on time each month and she had receipts to prove it. The tenant said that she did not pay the full utility bills in April and July 2019 because she did not get garbage cans for the garbage service.

The landlord stated that the tenant breached a material term of the tenancy agreement by preventing the landlord from completing a proper inspection of the rental unit. The tenant denied this, stating that the landlord posted a notice to inspect and repair, but no repair was done, as the landlord simply walked into her bedroom and bathroom, so she called the police.

The tenant seeks for the landlord to repair the front and back doors at the rental unit, which she said causes a cold draft to enter from outside. The landlord stated that he would not repair the doors because he already did so in December 2018, and he was not willing to replace them, as they were fully functioning.

### Analysis

The landlord provided undisputed evidence at this hearing. The landlord provided the tenant with a demand letter, dated August 16, 2019, for payment of full utilities within 30 days. The tenant failed to pay the full utilities of \$106.41 due on August 17, 2019, within five days of receiving the 10 Day Notice. The tenant filed this application to dispute the 10 Day Notice on September 20, 2019, pursuant to section 46(4) of the *Act*, within the five-day time limit. However, the tenant agreed at the hearing that she did not pay the full utilities due for this entire tenancy as well as for the most recent utilities bill due in August 2019. I find that the tenant owes these unpaid utility amounts to the landlord, as she did not pay them directly to the City. These utilities are in the landlord’s name and attached to the rental unit; if they are unpaid, they are added to the landlord’s property taxes at the end of each year.

In accordance with section 46(6) of the *Act*, the failure of the tenant to pay the full utilities within five days led to the end of this tenancy on October 5, 2019, the effective

date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by October 5, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, the tenant's application to cancel the 10 Day Notice, dated September 20, 2019, is dismissed without leave to reapply.

Since I have granted an order of possession based on the 10 Day Notice, I do not need to make a decision based on the landlord's 1 Month Notice. The tenant's application to cancel the 1 Month Notice, dated August 3, 2019, is dismissed with leave to reapply.

As this tenancy is ending, I do not need to make any repair orders with respect to the doors at the rental unit. The remainder of the tenant's application is dismissed without leave to reapply.

During the hearing, the tenant stated that if my decision was not in her favour, she would appeal it.

### Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application to cancel the landlord's 1 Month Notice, dated August 3, 2019, is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The remainder of the tenant's application is dismissed 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: October 08, 2019

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Residential Tenancy Branch