



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, OLC, CNR, OPU, OPC, MNDCL-S, MNRL-S, FFL

### Introduction

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

- an order for the landlord to comply with the Act, regulation and/or tenancy agreement, pursuant to section 62;
- an order for the landlord to carry out repairs, pursuant to section 33; and
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice"), pursuant to section 46.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- an order for possession under a Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- an order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55; and
- a monetary order for unpaid rent, utilities and for compensation for damage or loss under the Act, Residential Tenancy Regulation ("Regulation") or tenancy agreement pursuant to sections 38 and 67 of the Act with a security deposit applied; and
- authorization to recover the filing fee for this application pursuant to section 72.

I left the teleconference connection open until 10:26 A.M. to enable the tenant CM to call into this teleconference hearing scheduled for 09:30 A.M. The tenant did not attend the hearing. The landlord, witness CH and advocate LE attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the notice of hearing, and evidence ("the application") in person on February 26, 2020 and find the tenant has been served the application in accordance with section 89(1)(a) of the Act. The service was witnessed by SS and a written statement was provided.

#### Preliminary Issue – Tenants' Application

In the absence of any attendance at this hearing by the tenant, I order the tenant's application dismissed without leave to reapply, pursuant to Rules of Procedure 7.1, 7.2 and 7.3:

##### **Rule 7 – During the hearing**

##### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

##### **7.2 Delay in the start of a hearing**

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

##### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

#### Preliminary Issue – Amendment

At the hearing the landlord sought to amend his application for a monetary order for unpaid rent to include \$500.00 for the unpaid rent of March 2020 and \$129.00 for unpaid utilities that were due on February 26, 2020 and to withdraw the application for payment of rent of February 2020, as this rent was paid by the tenant after the Ten-Day Notice was served.

The landlord's monetary claim for unpaid March rent and utilities should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the Act, I amend the landlord's monetary claim for unpaid March rent to \$500.00 and unpaid utilities to \$219.59.

### Issues to be Decided

Is the landlord entitled to:

- an order for possession based on either the Ten-day Notice or the One Month Notice?
- a monetary order for unpaid rent and utilities?
- a monetary order for compensation for damage or loss under the Act or tenancy agreement?
- authorization to recover the filing fee?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained to the attending party it is his obligation to present the evidence produced.

The monthly tenancy started on October 13, 2019. Monthly rent is \$500.00 plus 25% of the cost of the utilities, due on the first day of the month. There is no written tenancy agreement. At the outset of the tenancy the landlord collected a security and pet damage deposit of \$500.00 and still holds it in trust.

The landlord affirmed the tenant contacted him in response to an advertising posted in the local newspaper. The advertising, submitted into evidence, states: "For Rent: One bedroom bachelor suite on [anonymized]. \$500.00 + utilities".

The landlord testified that on February 01, 2020 he served in person the Ten-day Notice with an effective date of February 11, 2020. A copy of the Notice was provided. When the Ten-day Notice was issued the tenant was in arrears for \$500.00 for rent and \$90.59 for utilities. The tenant paid \$250.00 for the February 2020 rent on January 31, 2020 and the balance on February 01, 2020, after the Ten-day Notice was served.

Currently the tenant is in arrears for \$219.59 for utilities and \$500.00 for March's 2020 rent. The landlord produced utility bills for \$381.08 (due on December 31, 2019) and \$516.01 (due on February 26, 2020). The utilities are in the name of a tenant not party to this dispute.

The landlord testified that on February 12, 2020 he served in person the One Month Notice. The effective date of the One Month Notice is March 31, 2020. A copy of the Notice was provided. The reason to end the tenancy is: "The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord."

The one-page attachment to the One Month Notice specifies that the tenant was threatening and shouting profanities against the upstairs tenant.

The landlord testified the rental property has two units in addition to the tenant's unit. The landlord and CH lived in one unit and tenant YL lived in the other since August 15, 2015. A copy of YL's tenancy agreement was provided. She was paying \$875.00 per month. The utilities for the rental property were in her name. Tenant YL left the rental property in February and did not give a one month notice to end monthly tenancy because she felt threatened by tenant CM.

A written statement dated February 26, 2020 was provided by tenant YL in which she described the tenant hostile's behaviour and very abusive language (which will not be reproduced here). The tenant stated:

I have been a tenant at [anonymized] for 3.5 years, but my living situation steadily declines since October 2019 due to the actions and behaviour of the tenant that moved in at the time.

This situation let to a marked increase in financial, and emotional and physical stress in my life. Emotionally and physically, my blood pressure was dangerously high (190/103), I had difficulty sleeping, and I was too afraid to leave my children at home. Financially, I had to pay the entirety of the last few hydro bills, and missed work to ensure my children were safe, resulting in lost wages. After several months of continued and escalating harassment, I had to call the police to report these aforementioned incidents.

On February 22, 2020, I was forced to vacate the suite for the safety of my children, myself and health and financial reasons.

A copy of a police report was provided to substantiate YL's statement. It states that on January 29, 2020 the police received a complaint at the tenancy address.

CH provided a written statement dated February 13, 2020:

Over the past few months CM has been demanding and has made unnecessary comment and hurtful profanities toward myself and my husband GH. We had to move out of our suite as I felt uncomfortable to continue to live at the residence with CM.

The night of January 29, 2020 when the police were called to come out, I seen the police from the window in the yard, but did not go outside.

The landlord provided a written statement dated February 13, 2020:

She has uttered profanities to myself and my wife at the door that is why I ignore her belligerent behaviour. She even tore the wreath off our front door in a fit of rage on January 29, 2020. As of January 31, 2020 my wife and I deemed it necessary to move out as we could not live in peace in our home. The upstairs tenant had to call the police in the late hours of Jan 29, 2020 as CM was screaming verbal profanities and dumping her recycling all over the yard. She was out of control and scared my upstairs tenant with her two children. The police came to secure the situation, and talk to CM in regards to her unacceptable behaviour. At this time I do not want to rent my empty suite to another tenant with CM still present. This results in loss of income for me. My upstairs tenant feels threatened and unsafe and I am at risk of losing a long term excellent tenant.

The landlord provided a copy of a text message from the tenant on January 21, 2020: "Hi [anonymized] can u pls get that idiot upstairs to move his card. I have a parking spot for my friends and it not helping that your truck is here as well!"

The landlord affirmed he vacated his rental unit on January 31, 2020 due to the disturbing behaviour of the tenant CM. The landlord affirmed his vacant unit could be rented for \$750.00 per month. The landlord affirmed he can not rent either of the the units because of the disturbing behaviour of tenant CM.

### Analysis

The testimony provided by the landlord during the hearing was cohesive and convincing.

### **Unpaid rent for March 2020**

I accept the landlord's uncontroverted testimony the tenant did not pay rent and owes for March 2020 in the amount of \$500.00.

The landlord is entitled to \$500.00 for March 2020 rent.

### **Unpaid utilities**

I accept the landlord's uncontroverted evidence (testimony and utilities bills) that the tenant owes the payment of utilities:

- \$129.00 for gas due on February 26, 2020 and
- \$90.59 for gas due on December 31, 2019.

However, both bills presented as evidence are addressed to tenant YL and no evidence was submitted of the landlord incurring any losses due to the tenant's failure to pay utilities. The bills are for the total utilities for the three independent rental units in the same dwelling.

Residential Tenancy Branch Policy Guideline 1 states:

**SHARED UTILITY SERVICE**

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable<sup>5</sup> as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

As there is no proof the landlord had any loss related to unpaid utilities, I dismiss the landlord's claim for unpaid utilities.

**Order of Possession**

Section 46(1) of the Act states:

46 (1)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.

[...]

- 4)Within 5 days after receiving a notice under this section, the tenant may
- (a)pay the overdue rent, in which case the notice has no effect, or
  - (b)dispute the notice by making an application for dispute resolution.

The Ten-day Notice was issued on February 01, 2020, the due date of February's rent. As the Ten-day Notice was issued on the due date and rent was paid on February 01, 2020, the Ten-day Notice is cancelled.

The One Month Notice issued on February 12, 2020, with an effective date of March 31, 2020, was served in accordance with section 88 (a) of the Act. I find the form and content of the One Month Notice is valid pursuant to section 52 of the Act.

The tenant did not successfully dispute the One Month Notice and is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy will end on the effective date of the Notice, March 31, 2020.

### **Loss of income**

The landlord is claiming \$1,754.00 in loss of income due to tenant CM's behaviour.

Evidence from tenant YL stated since October 2019 (when tenant CM moved in) she has been subject to verbal abuse, volatile and inappropriate behaviour. The landlord's text message from tenant CM on January 21, 2020 uses abusive language. On January 29, 2020 the police received a complaint at the dispute address.

The landlord did not serve the One Month Notice for cause until February 12, 2020, after service a notice for unpaid rent and utilities. The landlord could have served the One Month Notice as early as October 2019, when the inappropriate behaviour started.

Residential Tenancy Branch Policy Guideline 5 states:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

[...]

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy

agreement, and the landlord may require written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

I find the landlord did not take the mandatory steps to mitigate his damages when tenant's inappropriate behavior started.

As the landlord delayed without a reason serving the One Month Notice, I dismiss the landlord's claim for loss of income.

As the landlord was partially successful in his application, I find the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. I order the landlord to retain the tenant's security deposit of \$500.00 in partial satisfaction of the loss incurred.

In summary:

Unpaid rent March 2020	\$500.00
Filing fee	\$100.00
Sub-total	\$600.00
Security deposit	\$-500.00
<b>Total</b>	<b>\$100.00</b>

### Conclusion

I grant an Order of Possession to the landlord effective **on March 31, 2020. This Order of Possession must be served immediately on the tenant.** Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the tenant's security deposit of \$500.00 in satisfaction of March's 2020 rent and grant the landlord a monetary order in the amount of **\$100.00**.



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 warn the tenant that she may be liable for any costs the landlord incur to enforce the order of possession and monetary award.

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: March 23, 2020

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Residential Tenancy Branch