



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNDCT, OLC  
                             CNC, OLC, CNR, PSF  
                             OPUM-DR, OPU-DR, MNDCL, OPC, FFL

### Introduction

This hearing dealt with the twice adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s first application for Dispute Resolution was made on November 12, 2020. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent, to request an order that the Landlord comply with the Act, and to request a monetary order compensation for my monetary loss or other money owed.

The Tenant’s second application for Dispute Resolution was made on January 4, 2021. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause (the Notice), to cancel a 10-Day Notice to End Tenancy for Unpaid Rent issued, to request an order that the Landlord comply with the Act, and to request that the Landlord be ordered to provide services or facilities required by the tenancy agreement or law.

The Landlord’s Direct Request Application was made on January 26, 2021. As the Tenant had already filed a dispute of the Notice, the Landlord’s application was crossed with the Tenant’s applications to be heard at the same time. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent and a monetary order for unpaid rent and to recover their filing fee.

The Landlord's filed an amendment to their Direct Request Application on February 19, 2021. In the Landlord's amendment application, they applied a One-Month Notice to End Tenancy for Cause and a monetary order compensation for my monetary loss or other money owed.

This hearing decision should be read in conjunction with the first Interim decision dated March 5, 2021, and the second interim decision dated April 6, 2021.

Three Agents for the Landlord (the "Landlord"), the Tenant and the Tenant Advocate (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

- Should the 10-Day Notice issued on December 1, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the One-Month Notice issued on December 23, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the 10-Day Notice issued on January 7, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the 10-Day Notice issued on January 16, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the One-Month Notice issued on January 28, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the 10-Day Notice issued on February 17, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on June 15, 2018, as a month-to-month tenancy. Rent in the amount of \$1,500.00 is to be paid by the first day of each month, and the Landlord collected a security deposit of \$750.00 and at the outset of this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that this tenancy started under a different property owner but that this Landlord purchased the property in 2020 and took over this tenancy as of July 1, 2020.

The Landlord testified that they served a One-Month Notice to end tenancy for Cause to the Tenant on January 28, 2021, by posting the Notice to the front door of the Tenant's rental unit. A copy of this Notice was submitted into documentary evidence by both the Tenant and the Landlord. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*
- *Tenant or a person permitted on the property by the tenant has:*
  - *Significantly interfered with or unreasonably disturbed another occupant or the landlord*
  - *Seriously jeopardized the health and safety or lawful right of another occupant or the landlord*
  - *Put the landlord's property at significant risk*
- *Breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so*

The Notice states the Tenant must move out of the rental unit by February 28, 2021. The Notice informed the Tenant of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant had paid rent/utilities late four times in the last year, consisting of the utility payment due October 2020, that was not paid until December 3, 2020, the November 1, 2020 rent was not paid until November 2, 2020,

the January 1, 2021 rent was not paid until January 14, 2021, and the utility payment due January 1, 2021, was not paid until January 17, 2021.

The Tenant testified that they had attempted to pay their rent in person to the Landlord on November 1, 2020, but that the Landlord did not answer the door when they knocked and that this forced them to make the payment a day late. When asked why they did not just leave the payment in the mailbox for the Landlord on the first, the Tenant testified that they normally make their payments personally to the Landlord and they wanted to continue making personal payments directly to the Landlord.

The Tenant testified that again in January 2021, the Landlord was not available to see them in person on January first when they attempted to make their payment, so they mailed the payment to the Landlord the next day, January 2, 2021, by Canada Post regular mail.

The Landlord testified that they served the Tenant with a demand for payment of utilities for this tenancy on September 9, 2020, and that on December 1, 2020, when they had still not received the utility payment, they issued a 10-Day Notice for Non-payment. The Landlord submitted a copy of the demand for payment and the 10-day Notice into documentary evidence.

The Landlord testified that they served the Tenant with a demand for payment of utilities for this tenancy on December 1, 2020, and that on January 16, 2021, when they had still not received the utility payment, they issued a 10-Day Notice for Non-payment. The Landlord submitted a copy of the demand for payment and the 10-day Notice into documentary evidence.

The Tenant testified that they paid both demand letters after received the 10-Day Notices, the first paid on December 3, 2020, and the second paid on January 17, 2021. The Tenant testified that they do not believe that the demands for utility payment were valid and that they only paid them after received the notices to end their tenancy because they were concerned that they might be evicted.

The Tenant argued that the demand of the utility payments was not valid for two reasons, the first that the demand for payment of the utilities included copies of bills that had critical information blacked out, that the Landlord's action of not disclosing the full bill made it impossible for them to verify the amount they were being charged and made the demand letters invalid. The tenant submitted copies of the demand letters into documentary evidence.

Secondly, the Tenant argued that they were being charged for gas usage in these demand letters and that their tenancy agreement stated they would only be charged for electrical and hydro and therefore, the Landlord's demand for the utility bill payments that included gas was not valid.

When asked, the Tenant testified that they had paid both hydro (electricity) and gas utilities to the previous owner, but the Tenant testified that was only due to that owner allowing them to freely use the back yard. The Tenant testified that during a previous hearing, file number recorded on the style of cause page of this decision, these new Landlord's had the written tenancy agreement strictly enforce, removing their right to use the back yard. The Tenant argued that since the tenancy agreement had been being strictly enforce regarding the use of the back yard, it should also now be strictly enforced regarding the utility payments.

The Landlord testified that they had only blacked out the account number on the copies of the utility bills that they served to the Tenant and that all the required information was visible on the copies of the bills that were served with the demand for payment to the Tenant.

The Landlord also testified that both hydro and gas are not included with this tenancy as clearly recorded in section 3 of the tenancy agreement for this tenancy, already submitted into evidence.

The Tenant requested that this Arbitrator render a decision as to whether or not the gas bill was included in their rent for this tenancy and whether or not the demand letters for payment were valid.

The Tenant testified that they had paid all the bills for this tenancy by check to the Landlord, including the amounts indicated on the 10-Day Notice issued on December 1, 2020, the 10-Day Notice issued on January 7, 2021, the 10-Day Notice issued on January 16, 2021, and 10-Day Notice issued on February 17, 2021. The Tenant submitted witness statements regarding the delivery of these payments to the Landlord.

The Landlord testified that they agree that they have received payments for the amounts indicated on the 10-Day Notice issued on December 1, 2020, and the 10-Day Notice issued on January 7, 2021.

However, the Landlord testified that they had not received the payment for the utility bills indicated on the 10-Day Notice issued on January 16, 2021, and the 10-Day Notice issued on February 17, 2021. The Landlord requested a monetary order for the outstanding utility bills for this tenancy.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenant has asked for a ruling on if they are required to pay 20% of the gas bill under their tenancy agreement. I have carefully reviewed the tenancy agreements for this tenancy, and I find section 3b of this agreement clearly recorded that electricity, heat, and natural gas were not included in the rent for this tenancy. The agreement goes on to record in the additional information part of this same section stating, the handwritten statement as follows:

“There will be 20 percent charge on the hydro and electrical bill.”

Although this tenancy agreement clearly confirms that the gas bill for this tenancy is not included in the rent for this tenancy, the tenancy agreement is vague on how much of the gas bill is due and payable by the tenant during this tenancy.

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligation under it.

### ***Enforcing rights and obligations of landlords and tenants***

**6** (1) *The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*

(2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*

(3) *A term of a tenancy agreement is not enforceable if*

*(a) the term is inconsistent with this Act or the regulations,*

*(b) the term is unconscionable, or*

*(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

After careful review of the tenancy agreement, I find that section 3 of the tenancy agreement does indicate what percentage of the gas bill is owed by this Tenant under this tenancy. Normally, the rule of contra proferentem would apply, and the ambiguity in this term would be resolved against the Landlord who drafted the tenancy agreement, as it is the drafter who bore the obligation to ensure that the terms therein were certain and the obligation of the parties was well-defined.

However, I accept the Tenant's testimony that for the first two years of this tenancy, they willingly paid 20% of all the gas bills presented to them by the previous owner. I find that it is reasonable to expect that the Tenant knew what percentage of the gas bill they were responsible for paying under this tenancy agreement even though the tenancy agreement was vague on this point.

Therefore, as this Tenant has demonstrated a clear understanding that they are to pay 20% of the gas utility bill due for this tenancy to the previous owner, I find that the rule of contra proferentem, in relation to the ambiguity in this term of this tenancy agreement, does not apply in this case. Consequently, I find that the Tenant owes 20% of the gas utility bills for this tenancy.

I will now address the Notices to end the tenancy; I find that the Tenant was in receipt of the One-Month Notice to end tenancy for Cause on January 31, 2021, three days after it had been posted to the front door of the rental unit, pursuant to the deeming provision set out in section 90 of the *Act*.

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent gives further guidance stating:

**Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent**

The Residential Tenancy *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

In this case, I accept the sworn testimony of the Tenant that they had paid their rent late twice in the last 12 months, for the November 2020 and January 2021 rent payments.

As for the utility payments, section 46(6) of the Act states the following:

***Landlord's notice: non-payment of rent***

*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.*

I accept the agreed-upon testimony of these parties that the Landlord issued a demand letter for a utility payment, by personal service, to the Tenant on September 9, 2020, and that the Landlord issued a 10-Day Notice for non-payment of these utilities on December 3, 2020. I also accept the Tenant's testimony that they paid this demand letter on December 3, 2020, 85 days after they had been served with the original demand payment letter.

Additionally, I accept that the Landlord issued a demand letter for a utility payment by posting it to the front door of the rental unit on December 1, 2020, and that the Landlord issued a 10-Day Notice for non-payment of this demand letter on January 16, 2021. I also accept the Tenant's testimony that they paid this demand letter on January 17, 2021, 45 days after they were deemed to have been in receipt of the original demand payment letter.

Pursuant to section 46(6), I find that the demands for payment dated September 9, 2020, and December 1, 2020, became late rent 30 days after the notices were received by the Tenant. As both the September 9, 2020, and December 1, 2020, were paid over 30 days after they were received by the Tenant, I find that the Tenant made both these payments late under the *Act*.

The Tenant has also claimed that neither the September 9, 2020, nor December 1, 2020 demand payment letters were valid as the Landlord had omitted/blacked out critical information from the attached bills. During these proceedings, the parties offered conflicting verbal testimony regarding what had been omitted/blacked out of the bills. In



cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; on this point, I find that it is the tenant who holds this burden of proof.

I have reviewed the documentary evidence submitted by the Tenant and the Landlord on this point, and I find that there is insufficient evidence before me to show that critical information had been omitted/blackout from the copies of the utility bills for this tenancy that had been served to this Tenant. After reviewing these demand letters and find that they are valid under the *Act*.

Consequently, I find that the Tenant has paid their rent late four times in the last twelve months and that this is a sufficient number of late payments to justify the Notice issued by the Landlord.

Therefore, I dismiss the Tenant's application to cancel the One-Month Notice to end tenancy for Cause issued on January 28, 2021.

Section 55 (1) of the *Act* states the following:

***Order of possession for the landlord***

***55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if***

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the One-Month Notice to end tenancy for Cause, and I find that this Notice complies with section 52 of the *Act*.

As I have dismissed the Tenant's application to dispute the One-Month Notice to end tenancy for Cause, I find that the Landlord is entitled to an order of possession pursuant to section 55 of the *Act*.

Accordingly, I grant the Landlord an order of possession effective not later than 2 days after service of this Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Since the tenancy has ended due to a fundamental breach of the tenancy agreement regarding the late payment of rent, there is no need to consider the remaining issues listed on this One-month Notice or of the other five Notices that were before me in these proceedings, consisting of a 10-Day Notice issued on December 1, 2020, a One-Month Notice issued on December 23, 2020, a 10-Day Notice issued on January 7, 2021, a 10-Day Notice issued on January 16, 2021, and a 10-Day Notice issued on February 17, 2021.

As for the Landlord's claim for a monetary order for unpaid rent and utilities for this tenancy, I have reviewed the testimony and documentary evidence before me in these proceedings, and I find that there is sufficient evidence before me to show that the Landlord has been paid in full for all rent and utilities due under the Notices that I have before me in these proceedings. Therefore, I dismiss the Landlord's claim for a monetary order for unpaid rent and utilities in its entirety.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their application, I find that they are entitled to recover the \$100.00 filing fee paid for their application. I grant the Landlord permission to retain \$100.00 from the security deposit they are holding for this tenancy in full satisfaction of this awarded amount.

Conclusion

The Tenant's Application to cancel the One-Month Notice, issued on January 28, 2021, is dismissed. I find the Notice is valid and complies with the Act.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. 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.

The Landlord is granted permission to retain \$100.00 from the security deposit they are holding for this tenancy in full satisfaction of the amount awarded in this decision.

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: May 6, 2021

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Residential Tenancy Branch