



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with 2 Advocates, one of whom observed only and did not take part in the hearing. The tenant also called 1 witness. The landlord attended the hearing with her spouse, and both gave affirmed testimony. The tenant and witness also gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy For cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?

### Background and Evidence

**The landlord** testified that on April 1 or May 1, 2020 the tenant resided in a cottage on the rental property, and moved to a suite in the barn on August 1, 2020, where the tenant still resides. Rent in the amount of \$1,800.00 is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the

tenant in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

There is no written tenancy agreement, however the landlord testified that the tenant started paying \$1,500.00 per month for rent, and the landlord accepted it to help the tenant out during COVID. The utilities are not up-to-date either. The agreement of the parties is for the tenant to pay 1/3 of utilities every month, which works out to approximately \$225.00 per month, and the landlord and another tenant each paid 1/3. The landlord has provided the tenant with a break-down and the tenant owes roughly \$2,900.00. The landlord has emailed the tenant, texted the tenant and provided utility bills to the tenant. Every month the landlord would ask the tenant to pay her share, but the landlord knew the tenant was in the hospital. Finally, the landlord said that utilities needed to be brought up to date, as well as the slipping rent amount. The tenant has only paid \$500.00 toward utilities on 2 occasions.

On May 15, 2021 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by taping it to the door of the rental unit. A copy has been provided for this hearing and it is dated May 15, 2021 and contains an effective date of vacancy of June 15, 2021. The reason for issuing it states: "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 and spouse now reside on the property, and lots of people are attending; there are too many visitors at night. The landlord also has video of the tenant taking down the security cameras that the landlord had installed due to thefts on the property. The landlord rents a cottage and an Air BNB suite downstairs, and the tenant makes a lot of people feel uncomfortable. Flashlights have been shone in windows, and the landlord has been receiving complaints.

**The landlord's spouse** testified that he and the landlord have been living at the rental property full time for a few months, but they have owned the property for a few years.

Rent is \$1,800.00 per month, and the landlord has accepted \$1,500.00 and has never called the tenant about the arrears, trying to be as gracious as possible recognizing that the tenant has medical issues. However the tenant is in arrears of rent \$300.00 each month since shortly after she moved to the barn.

The tenant has also started screaming matches, very loud, waking up the landlord and spouse and Air BNB guests. In winter the landlord rents a cottage, and numerous times people shine flashlights in the windows, making a lot of people uncomfortable.

The tenant had agreed to pay 1/3 of utilities, which the landlord has not received. At one point, the landlord and spouse were told that the tenant didn't pay utilities because she didn't know how much and that the landlord wasn't clear, and that it was not part of the tenancy agreement, but needs to choose a lane. It was in the agreement. A spreadsheet of hydro bills has been provided for this hearing, which the landlord's spouse testified was taken from the hydro company's website. The landlord and spouse cannot afford to subsidize the tenant.

**The tenant's witness** was called out of order at the request of the tenant's Advocate.

The witness testified that rent was \$1,500.00 per month, and the landlord wanted 1/3 utilities, but there were 4 units on the property, and no laundry in either of the units that the tenant lived in. From what the witness gathered, the tenant agreed to pay some utilities, but there was never an agreement about the amount the tenant was to pay, but the witness wasn't there for the conversation.

The tenant spent almost 3 months in hospital with major health issues.

**The tenant** testified that there was no specified agreement, nor has the tenant received an amount of utilities she owed, nor did she ever receive a monthly bill, which is why she never paid for utilities. The landlord did tell the tenant that she owed utilities.

The tenant did admit during cross examination that she received rolled up papers after the landlord gave the notice to end the tenancy. The tenant also agrees that utilities are owed, but is not sure what the monthly bills are, even with the break-down provided by the landlord. The parties never came to a monthly agreement. The tenant gave the landlord \$1,000.00 blindly but is not sure what that was for.

#### SUBMISSIONS OF THE TENANT'S ADVOCATE:

The tenant lived in the cottage and then was asked to move to the barn. The tenant understood she was to pay a portion of utilities, but did not agree to 1/3 and has been paying rent and was told it was \$1,500.00 since moving to the barn suite. The landlord said that the tenant owed utilities but the tenant only received the Telus bill after the notice to end the tenancy was issued, and a spreadsheet which is difficult to read. The tenant is still not clear what she owed. The units are not individually metered, and the tenant never received a clear hydro bill, so it's difficult to know what power the tenant uses.

## SUBMISSIONS OF THE LANDLORD

The tenant was not forced to move to the barn; that was an offer which she agreed to. The verbal agreement was for 1/3 of the utilities to be paid by the tenant. It's very unfair to subsidize utilities when she's clearly using them. Evidence shows that the tenant agreed that she owes it, and when the 2<sup>nd</sup> payment of \$500.00 was made, that was shortly before the notice to end the tenancy was served. There was also a plan to pay the utilities at \$500.00 every 2 weeks until paid, but the tenant didn't meet any targets. It's a surprise to the landlord today that the tenant disagrees to 1/3. Further, rent is \$1,800.00 per month, and emails provided for this hearing prove that. The tenant wasn't able to pay the full amount because she was ill, but is not up to date on rent. The landlord was kind enough to accept \$1,500.00 but cannot continue to subsidize hydro and rent.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The landlord and spouse testified that the parties had a verbal agreement with respect to the payment of utilities. An oral agreement is as binding as a written agreement, but is harder to prove. The landlord has not made an application for recovery of unpaid rent or utilities, or any other monetary claim.

The landlord also raised other concerns with the tenancy and the tenant's behaviour, but that cannot be considered in this Decision because the reason for issuing the Notice is breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The material term was the payment of utilities.

In order for a landlord to end a tenancy for breach of a material term of the tenancy agreement, a landlord must be able to establish that the term is material to the tenancy, meaning that the term is so important that the party would not have entered into a tenancy agreement if the term was not agreed to. I also refer to Residential Tenancy Policy Guideline #8 – Unconscionable and Material Terms, which states, in part:

“To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.”

In this case, I am satisfied that the tenant was required to pay utilities, and the tenant paid \$500.00 on 2 occasions only. The tenant testified that she didn't pay anything else because she didn't know how much she owed.

The landlord has provided 2 strings of emails or text messages, in a transcript, but neither provide a deadline or a statement that if the problem is not fixed by the deadline, the landlord would end the tenancy. The tenant testified that she didn't receive any utility bills until after the landlord gave notice to end the tenancy.

In the circumstances, I am not satisfied that the landlord has established that the tenant was provided with a deadline, or statement that if the problem was not corrected by the deadline, the landlord would end the tenancy. Therefore, I find that the landlord has not established breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, and I cancel the Notice.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by the amount, or may otherwise recover it by filing the order in the Provincial Court of British Columbia, Small Claims division as a judgment for enforcement.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 15, 2021 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that

the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: August 16, 2021

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Residential Tenancy Branch