



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDCT, RP, RR, PSF, CNR and FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Landlords HL and Burr Properties, represented by property manager AL, attended the hearing. HL was assisted by agent AK. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue – Service

The landlords confirmed receipt of the notice of dispute resolution, the evidence and the April 20, 2021 amendment in person on April 20, 2021 and the July 13, 2021 amendment on July 14, 2021. AK affirmed the July 13, 2021 amendment should not be accepted, as it is not related to the original claim.

Rules of Procedure 4.1 and 4.6 state:

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

An amendment may add to, alter or remove claims made in the original application.

[...]

4.6

[...] In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

Based on the landlords' testimony, I find the tenant served the application, the evidence and the amendments in accordance with sections 88 and 89 of the Act and Rules of Procedure 4.1 and 4.6. Per Rules of Procedure 4.1, the tenant can amend the application. As such, I accept both amendments.

The tenant confirmed receipt of the landlord's response evidence on July 29, 2021.

Based on the tenant's testimony, I find the landlords served the response evidence in accordance with sections 88 and 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

I note that section 55(1.1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act:

If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 day notice to end tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

### Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?
3. If the tenant's application is dismissed, are the landlords entitled to an order of possession and monetary order for unpaid rent?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties.

Both parties agreed the tenancy started on June 01, 2018. Monthly rent is \$950.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$475.00 was collected and the landlord holds it in trust.

Both parties agreed the tenant pays \$125.00 per month for utilities and when the electricity bill is available at the end of the year the tenant pays the balance or receives a credit. The tenancy agreement was submitted into evidence. It states:

Hydro split 50/50 with [redacted for privacy]. When hydro bills are totalled at the end of the year, tenant will receive a credit if total is less than the monthly payments or pay back extra if total is greater than the monthly payments.

The landlord affirmed he served the Notice by attaching it to the tenant's door on July 07, 2021. The tenant confirmed receipt of the Notice in July 2021. A copy of the July 06, 2021 Notice was submitted into evidence. It indicates the tenant did not pay utilities in the amount of \$437.42 due on July 07, 2021. The effective date is July 17, 2021. The left margin of the first page of the Notice was not scanned and it does not indicate the tenant's address unit ("site/unit #"), the complete name of the landlord and the landlord's address unit ("site/unit #").

The tenant testified he did not pay the utilities and continues to occupy the rental unit.

The tenant confirmed receipt of the March 12, 2021 demand letter (the letter) in March 2021. It states:

SUBJECT: HYDRO

Further to your agreement with the landlord, please find attached the hydro invoices for the property.

Total hydro bills for January 10, 2020 to January 8, 2021 amounted to \$3,874.84 The share for your unit is \$1,937.42

Less monthly payments 12 months x \$125.00 == \$1,500.00 This leaves an amount due of \$437.42

Please contact our accountant [redacted for privacy] to arrange payment, her email [redacted for privacy] or she can be reached at [redacted for privacy].

The tenant said he did not receive the electricity bills. AL affirmed the electricity bill was attached to the letter. The tenant stated he emailed the landlord and asked for the electricity bill and the landlord did not reply to his emails. AL testified he received several emails from the tenant and that he tried to answer them.

The tenant's summary of facts dated April 08, 202, served to the landlords as evidence, states:

Usually I get money back, or complaints from Henry about the usage. This year after asking about electricity many times, not comment from either. Just dropped off a 437.42\$ bill for me to pay (Letter Mar, 2021). I am trying to get access to the online hydro bills to look at and if possible draw conclusions (as was able to in 2018/2019), however, no luck or help from [landlords]

I have asked several times if [landlords] would like to discuss an reasonable compensation / plan moving forward with no answer.

### Analysis

Based on the landlord's convincing testimony, I find the landlord attached the Notice to the tenant's door on July 07, 2021. Per section 90 (c) of the Act, the tenant is deemed served with the Notice on July 10, 2021, in accordance with section 88 (g) of the Act.

I accepted the undisputed testimony that the tenant served the amendment to dispute the Notice on July 14, 2021. I find the tenant's application was submitted by the five-day deadline to dispute the Notice, in accordance with section 46(4)(b) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct:

#### 6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. **However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.**

(emphasis added)

Section 52 of the Act states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) **give the address of the rental unit,**
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e)when given by a landlord, be in the approved form.

(emphasis added)

The incomplete copy of the Notice submitted into evidence does not indicate the complete rental unit's address, as the section "site/unit #" was not scanned. The landlord must submit a complete copy of the Notice so the arbitrator can confirm its compliance with section 52 of the Act.

During the hearing I explained to the landlord that the copy of Notice submitted was not properly scanned and allowed the landlord to submit a complete copy of the same Notice until 6:00 P.M. of the hearing date. The landlord submitted the same incomplete copy of the Notice.

I find the incomplete copy of the Notice submitted twice by the landlord is not in accordance with section 52(b) of the Act, as it does not indicate the complete address of the rental unit.

Accordingly, the Notice dated July 06, 2021 is cancelled and of no force or effect.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee.

### Conclusion

The Notice dated July 06, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from his next rent payment to recover the filing fee.

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 11, 2021

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Residential Tenancy Branch