



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MDCT, OLC, RR, MNDCL, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application filed on June 13, 2021 is seeking orders as follows:

1. For a monetary order for unpaid utilities;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application filed on March 19, 2021, is seeking orders as follows:

1. For a monetary order for loss of quiet enjoyment;
2. For a monetary order for over payment of utilities;
3. To be allowed to reduce rent for repairs, services or facilities agreed upon but not provided; and
4. To have the landlord comply with the Act.

The tenant's application filed on May 6, 2021, is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities Return (the "Notice") issued on May 2, 2021; and
2. To have the landlord comply with the Act.

This matter commenced on July 2, 2021 and was adjourned due to insufficient time. In my interim Decision, it was agreed that the tenant's application filed on May 6, 2021, be joined with this hearing. I also note in my interim decision dated July 2, 2021, that I made an inadvertent error as I did not list the landlord's application in my interim decision; however, I have corrected that error through this Decision.

In my interim decision of July 2, 2021, I ordered both parties to provide a detail calculation of the utilities owed, gas, water, and electricity, with the attached invoices as the parties could not agree on a calculation. Both parties complied with my order and have submitted the detail calculation; however, the landlord did not provide any invoices for the electricity . The interim decision should be read in conjunction with this Decision.

Both parties appeared on September 14, 2021, the parties were reminded that they are still under affirmed affirmation from the prior hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. As this is related to both the landlord's monetary claim for unpaid utilities and the tenant's monetary claim for overpayment of utilities. I find I must consider these disputes as they are related.

However, I do not find the tenant's dispute to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and the tenant dispute for a monetary order for loss of quiet enjoyment are sufficiently related to be determined during these proceedings. Therefore, I dismiss this portion of the tenant's claim with leave to reapply.

After the hearing had ended, I requested additional written submission from the parties as I needed to determine if there were more than one meter for water and gas on the subject property. The interim decision dated September 16, 2021 should be read in conjunction with this Decision.

I note both parties provided their written submissions for my review and consideration. In the written submission, there is no dispute that the property has 4 units and has two different civic addresses and that there is one meter for each address for gas and water. Each meter reads the consumption for the two units under that civic address. The tenant does not dispute that they should be responsible for 50% of the consumption for the civic address to which they reside.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Is the tenant entitled to a monetary order for overpayment of utilities?

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on April 1, 2020. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$725.00 was paid by the tenant.

The landlord testified that the tenant has failed to pay the utilities for gas, electricity, and water. The landlord stated that the total utilities since the tenancy started is the amount of \$4,814.73, less the amount paid by the tenant \$1,171.00 leaving a balance owed of \$3,643.73.

The advocate for the tenant submits that the landlord never gave the tenant any invoices for the utilities until the tenant was questioning the high cost. The advocate stated that the tenant found out that they were paying the utilities for the rental unit below them. The advocate stated that the tenant does not dispute they should be sharing a portion for the utilities; however, it is unconscionable that the tenant has been paying for utilities that they do not consume.

The advocate submits that the landlord's calculation is wrong as there are two invoices that have been billed twice in their calculation. The advocate stated that the landlord did not provide any invoices for electricity, only copies of their bank statement showing the withdrawal and due to this they did not put the electricity in their calculation as there are no invoices to support them. The advocate stated that this does not prove it is the electricity for the tenant's unit and the tenant has the right to review all invoices that the landlord wants them to pay to ensure their accuracy.

The advocate submits that they also question the water invoices and believe it could be for all four units, as they do not believe that there would be two separate meters for one property. The written submission of the advocate confirms there are two separate water meters and two separate gas meters for the 4 units and each meter is for 2 units.

The landlord argued that at the start of the tenancy the tenant was given lower rent of \$1,450.00 because they knew they would have to pay for the full cost of the utilities for

the two units. The landlord confirmed at the hearing the lower unit pays the amount of \$1,200.00. The landlord stated that the lower unit is 150 square feet smaller than the tenant's unit and has a ceiling height of 6 feet. The landlord referred to a text message dated March 8, 2020, which they believe is confirmation that the tenant agreed to pay the utilities, which reads in part,

“...So, if you are still interested in the suite \$1,450.00 plus utilities”

[Reproduced as written.]

The landlord argued that they did not provided the electricity invoices because they are not in their name and don't have access to them; however, the amount is automatically withdrawn from their account. The landlord stated that they should not be excluded from the calculation as the tenant is clearly using electricity.

The landlord argued that the property has two water meters on the property that each water meter is connected to two rental units. The written submission of the landlord supports there are separate meters and there are two rental units on each meter.

### Analysis

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

In this case, I do not accept the landlord's evidence that the tenant agreed to pay the utilities of gas, water, and electricity for a rental unit that they do not occupy in exchange for a lower rent.

The landlord has provided no evidence that the tenant knew they would be paying for utilities for two units. It would be reasonable that if this was true that there would be some notation at the very least in the tenancy agreement to show a lower rent was negotiated for this reason or in the text messages. The text message the landlord referred to, dated March 8, 2020, just shows the tenant agreed to pay the utilities, nowhere does it disclose to the tenant that she would be responsible to pay for another occupant's utility consumption.

Furthermore, even if it was true, that the tenant was aware that they would be responsible to pay for another rental unit's utilities, I would find any term that makes a

tenant pay for utilities to which they do not consume and have no control over the consumption is unconscionable and therefore not enforceable.

I also find it unreasonable that the landlord is unable to provide copies of any electricity invoices. As an owner of the subject property, they can or should be able obtained those invoices, especially when they want the tenant to pay for them.

Therefore, I decline to enforce any payments for utilities prior to July 1, 2021. Having said this, I find there is no further amount due to the landlord as this is an unconscionable term and any payments received from the tenant has satisfied their portion as the tenant does not dispute they are obligated to pay their share. This means no further amount is due to the landlord or the tenant that relates to utilities prior to July 1, 2021. Therefore, I dismiss their respective applications on this issue.

Based on the above, I find the Notice issued for unpaid utilities must be cancelled as it would be unreasonable to end a tenancy for unpaid utilities that were not consumed by the tenant or for invoices that were not presented to the tenant for verification, such as the electricity invoices. The tenancy will continue until legally ended in accordance with the Act.

In this case, the tenant does not dispute that they should pay for their portion of the utilities. At the hearing on July 2, 2021, I made an interim decision that the tenant is to pay 50% of the utilities commencing July 1, 2021. I find that amount is reasonable and fair to both parties. Therefore, I find it appropriate to confirm in this Decision that the tenant is to continue to pay 50% of the shared utilities, water, gas, and electricity.

The landlord must present the tenant with a copy of the invoices for the utilities within a reasonable time and not their bank statement. The tenant must pay the invoice as soon as possible; however, it must be paid within 30 days of receipt of the invoice as any day over 30 days is grounds to end the tenancy.

### Conclusion

The tenant's application to cancel the Notice is granted. The tenant is required to pay 50% of the shared utilities commencing July 1, 2021. The tenancy will continue until legally ended. The tenant's application for a monetary order for over payment of utilities is dismissed. The landlord's application for a monetary order for unpaid utilities is dismissed.

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 20, 2021

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Residential Tenancy Branch