



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNRT, OPR, MNR, MNU, FFL

### Introduction

The Tenant applies for the following relief:

- Cancelling a 10-Day Notice to End Tenancy pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”);
- Compensation for monetary loss pursuant to s. 67 of the *Act*;
- An order that the Landlord provide services or facilities required by the tenancy agreement or law pursuant to s. 65 of the *Act*;
- Compensation for emergency repairs undertaken at the rental unit by the Tenant under s. 67 of the *Act*;
- An order pursuant to s. 62 of the *Act* that the Landlord comply with the *Act*; and
- Return of their filing fee pursuant to s. 72 of the *Act*.

The Landlord makes a cross-application seeking the following relief:

- An order for possession pursuant to s. 55 of the *Act* after issuing a 10-Day Notice to End Tenancy;
- An monetary award for unpaid rent and utilities pursuant to s. 67 of the *Act*; and
- Return of their filing fee pursuant to s. 72 of the *Act*.

D.F. and D.F. attended as Landlords. D.T. attended as agent for the Tenant, B.K., who was unable to attend. D.T. resides in the rental unit with B.K..

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The 10-Day Notice to End Tenancy at issue in this application is signed June 4, 2021. No effective date is provided in the notice. The Landlords advised serving the Notice to End Tenancy on June 4, 2021 by posting it to the Tenant's door. The Tenant acknowledge receipt of the Notice to End Tenancy. I find that Tenant was served with the Notice to End Tenancy in accordance with s. 88 of the *Act* and is deemed to have been served on June 7, 2021 pursuant to s. 90 of the *Act*.

The Tenant advised having served a copy of the Notice of Dispute Resolution for their application on the Landlords by way of registered mail sent on July 6, 2021. The Landlords acknowledged receipt of the Tenant's Notice of Dispute Resolution on July 9, 2021. I find that the Tenant's application was served in accordance with s. 89 of the *Act* and was received by the Landlord on July 9, 2021.

The issue of the Tenant's evidence was raised during the hearing. D.T. advised that B.K., who was not present, had submitted evidence to the Residential Tenancy Branch in person. This evidence was not uploaded into the system by the Residential Tenancy Branch and the Landlords denies having received anything other than the Notice of Dispute Resolution from the Tenant as mentioned above. D.T. was unclear what the evidence contained. I find that the Tenant has failed to demonstrate service of the evidence in accordance with the *Act* and the hearing proceeded on the oral submissions of D.T. alone.

The Landlords indicated they served their Notice of Dispute Resolution and evidence by way of registered mail sent on July 14, 2021. The Tenant acknowledged receipt of the same. I find that the Landlord's application and evidence was served in accordance with s. 89 of the *Act* and is deemed to have been served on July 19, 2021 pursuant to s. 90 of the *Act*.

#### Preliminary Issue – Effective date for the 10-Day Notice to End Tenancy

As noted above, the 10-Day Notice to End Tenancy did not list an effective date. Section 52 of the *Act* sets out the formal requirements for a notice to be effective, which indicates at s. 52(c) that a notice must state the effective date of the notice.

Pursuant to s. 68 of the *Act*, I have discretion to amend a notice to end tenancy that does not comply with s. 52 if I am satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice and, in the circumstances, it is reasonable to amend the notice.

I accept that failing to list an effective date is a technical deficiency. I have no doubt, under the circumstances, that the Tenant knew the nature of the 10-Day Notice to End Tenancy as they applied to have it cancelled and understood its timelines, namely that the tenancy would end 10-days after the notice was received. I find that it would be reasonable to amend the notice and amend it such that the effective date be June 14, 2021.

#### Preliminary Issue – Tenant's Application

The Tenant seeks wide ranging relief in their application. I advised the Tenant of the limited timelines involved with the hearing and the need to address the central issue of whether the tenancy would continue or end based on the 10-Day Notice to End Tenancy. I find that the following relief in the Tenant's claim is unrelated to the central issue in the competing applications:

- Compensation for monetary loss pursuant to s. 67 of the *Act*;
- An order that the Landlord provide services or facilities required by the tenancy agreement or law pursuant to s. 65 of the *Act*; and
- An order pursuant to s. 62 of the *Act* that the Landlord comply with the *Act*.

Accordingly, pursuant to Rule 2.3 of the Rules of Procedure I dismiss the Tenant's three claims listed above.

I accept that compensation for emergency repairs may relate to the issue of unpaid rent by virtue of s. 33(7) of the *Act* and submissions were made by the parties with respect to this aspect of the Tenant's claim.

#### Issue(s) to be Decided

- 1) Whether the 10-Day Notice to End Tenancy should be upheld and an order for possession granted?
- 2) What compensation, if any, should be granted for unpaid rent or utilities?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlords submitted a copy of the written tenancy agreement, which indicates that the Tenant took possession of the rental unit on August 4, 2018. The rental unit was the upper floor of a property in which the downstairs were also rented. Rent was payable in the amount of \$2,200.00 per month. As per the written tenancy agreement, utilities were to be split 60/40 between the upstairs and downstairs tenants of the residential property and, in the event there was no tenant in the basement, utilities were split 90/10 between the Tenant and the Landlords. Rent and utilities were due on the 1<sup>st</sup> of each month. The Landlords holds a security deposit of \$1,100.00 in trust for the Tenant. The Tenant and Landlords confirmed the details of the tenancy agreement.

Despite the written tenancy agreement, the Landlords indicated that they have asked for \$93.60 for utilities from the Tenant since the beginning of the tenancy in August 2018. No written demands were made by the Landlord with respect to utilities as the parties had an understanding that utilities would not deviate month-to-month and were collected at the fixed amount of \$93.60 throughout the tenancy.

The Landlords provided utility statements for BC Hydro starting in August 2018 and for Fortis since September 2018. The Landlord further prepared a summary sheet indicating the Tenant's obligation to pay utilities as per the tenancy agreement and the amount that was paid, being the fixed amount of \$93.60. The Landlord's summary indicates that the Tenant underpaid utilities and had received a discount by paying the fixed rate over the course of the tenancy.

The 10-Day Notice to End Tenancy lists total arrears of \$6,604.09, which the Landlords indicate combined rental and utility arrears. The Landlords advised that arrears began to accrue beginning in July 2020 and that they had previously issued a 10-Day Notice to End Tenancy in February 2021. This was withdrawn after the parties came to an agreement for a repayment plan on total arrears. The Landlords indicated that total arrears in February 2020 was \$7,604.09 but did not submit a copy of the repayment plan as part of this application. It was after the Tenant failed to make payments on the payment plan and their rent for the month of June 1, 2021 that the Notice to End Tenancy was issued.

The Landlords provided a summary of the payments made by the Tenant from July 31, 2020 to June 1, 2021, which I summarize as follows:

Month	Rent	Utilities	Payment	Difference
July 31, 2020				-\$48.89

August 2020	\$2,200.00	\$93.60	\$2,293.60	\$0.00
September 2020	\$2,200.00	\$93.60	\$1,000.00	-\$1,293.60
October 2020	\$2,200.00	\$93.60	\$2,000.00	-\$293.60
November 2020	\$2,200.00	\$93.60	\$1,000.00	-\$1,293.60
December 2020	\$2,200.00	\$93.60	\$1,500.00	-\$793.60
January 2021	\$2,200.00	\$93.60	\$0.00	-\$2,293.60
February 2021	\$2,200.00	\$93.60	\$3,000.00	\$706.40
March 2021	\$2,200.00	\$93.60	\$3,293.60	\$1,000.00
April 2021	\$2,200.00	\$93.60	\$2,293.60	\$0.00
May 2021	\$2,200.00	\$93.60	\$2,293.60	\$0.00
June 2021	\$2,200.00	\$93.60	\$0.00	-\$2,293.60
<b>Total Arrears</b>				<b>\$6,604.09</b>

The Landlords further advised that they have not received rent or utilities from the Tenants for the months July, August, September, and October of 2021. They provide an updated monetary worksheet in which they claim \$8,800.00 for unpaid rent and \$596.41 for unpaid utilities, which represents utilities as calculated under the tenancy agreement. In total, at the hearing the Landlords claim \$16,000.50 for unpaid rent and utilities.

The Landlords have provided copies of the utility bills for Fortis and BC Hydro over the relevant period from August 2020 to September 2021. The Landlords advised that the amount claimed of \$48.89 relates to utilities but did not provide invoices on this amount and were unable to explain on they arrived at this figure.

The Tenant did not dispute that they did not pay rent and utilities as described by the Landlords. Indeed, upon reviewing the summary table provided by the Landlords, the Tenant confirmed that it was accurate. The Tenant made no objections with respect to the Landlords' submissions respecting unpaid rent and utilities for the months of July, August, September, and October 2021.

D.T. advised that B.K. injured himself in August 2020 after a wooden outdoor stairway at the residential property gave way. D.T. indicated that B.K. injured several of his ribs when he fell. Following the injury, B.K. was unable to work and, as a result, was unable to pay rent.

D.T. advised that B.K. and the Landlords had discussed repairing the stairwell. The Tenant claimed \$1,763.65 from the Landlords in compensation for emergency repairs in

their application. D.T. indicated this number was discussed between B.K. and D.F., though she was unable to provide any degree of specificity with respect to how the number was arrived at.

The Landlords submitted text messages between D.F. and B.K. in January 2021 discussing the repairs to the stairs and in which B.K. indicates he would undertake the repairs himself. The text messages do not mention a specific amount, however, D.F. admitted that the number cited by the Tenant was accurate insofar as he had discussed it with B.K.. Prior to work being commenced, the Landlords indicate that they asked for estimates from B.K., which were not provided.

The Landlords indicate that they learnt the stairs had been rebuilt in February 2021 after they asked a contractor to attend the property to provide them with an estimate. As the work had been completed, no work was undertaken by the contractor. In the Landlord's evidence, they provide a copy of an email from September 23, 2021 from a contractor who raises issues in the workmanship of the stairs and indicates the work would need to be redone.

### Analysis

The Tenant applies to cancel a 10-Day Notice to End Tenancy pursuant to s. 46 of the *Act* and compensation for emergency repairs pursuant to s. 67 of the *Act*. The Landlords apply for an order for possession under s. 55 of the *Act* and a monetary award for unpaid rent and utilities pursuant to s. 67 of the *Act*. Both parties claim for return of their filing fees pursuant to s. 72 of the *Act*.

Pursuant to s. 46 of the *Act*, where a tenant has failed to pay rent when it is due, a landlord may issue a 10-day notice to end tenancy on any day thereafter. After the tenant receives the notice, they have five (5) days to either pay the overdue rent or dispute the notice.

The Tenant acknowledges not paying rent as described by the Landlord, however, the Tenant argued that they did not need to pay rent B.K. was injured while using the stairs at the residential property.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a

set of limited circumstances in which monies claimed by the Tenant can be deducted from, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

The Tenant's circumstances do not fit any of the provisions of the *Act* that allow for the deduction of rent and the amount claimed by the Tenant for emergency repairs does not correspond with the amount they admit they have not paid to the Landlords.

Accordingly, I find that the 10-Day Notice to End Tenancy, which complies with the formal requirements of s. 52 of the *Act*, is valid and the Landlords shall be granted an order for possession.

The Landlord also seeks a monetary award for unpaid rent and utilities. The tenancy agreement sets out that utilities are to be paid by the Tenant based on a shared formula on whether there is a tenant in the basement suite. However, the parties do not appear to have ever following clauses 4.3 to 4.6 of the tenancy agreement instead adhering to a fixed payment of \$93.60 throughout the tenancy.

The *Act* specifies a clear process by which utilities are to be treated as unpaid rent under s. 46(5). If utility charges are part of the tenancy agreement, the landlord must at first provide a written demand for payment of the utility charge and, if it has not been paid within 30 days, then it may be treated as unpaid rent. Policy Guideline #39 states the following at page 4:

The landlord must prove service on the tenant of the written demand for payment of utilities. A *Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities* (form RTB-34) can be used for this purpose. The preferred and additional methods of service described above can be used for that purpose.

The demand letter must include copies of the utility bills.

The demand letter must be received by the tenant at least 30 days before issuing the *10 Day Notice to End Tenancy for Unpaid Rent or Utilities*.

The Landlords admit not providing demands for utilities, instead relying on the understanding that utilities would be paid at the fixed rate of \$93.60, this despite the written tenancy agreement. The Tenant's obligation to pay utilities arises out the tenancy agreement and the parties appear to have never followed its relevant clauses. I accept that the Landlord has provided utility statements throughout the course of the tenancy, however, without the written demands, the Tenant's obligation as per the tenancy agreement lacks specificity and cannot form the basis of a claim for compensation. Simply put, the Landlords failed to comply with s. 49(5) of the *Act*. I find that the Landlords have failed to demonstrate service of written demands for utilities as none appear to have ever been issued and, accordingly, I decline to grant the Landlords claim for unpaid utilities.

Looking at the relevant period, which began in August 2020, I summarize the Tenant's rent obligations and payments as follows:

Month	Rent Due	Tenant payment	Difference
August 2020	\$2,200.00	\$2,293.60	\$93.60
September 2020	\$2,200.00	\$1,000.00	-\$1,200.00
October 2020	\$2,200.00	\$2,000.00	-\$200.00
November 2020	\$2,200.00	\$1,000.00	-\$1,200.00
December 2020	\$2,200.00	\$1,500.00	-\$700.00
January 2021	\$2,200.00	\$0.00	-\$2,200.00
February 2021	\$2,200.00	\$3,000.00	\$800.00
March 2021	\$2,200.00	\$3,293.60	\$1,093.60
April 2021	\$2,200.00	\$2,293.60	\$93.60
May 2021	\$2,200.00	\$2,293.60	\$93.60
June 2021	\$2,200.00	\$0.00	-\$2,200.00
July 2021	\$2,200.00	\$0.00	-\$2,200.00
August 2021	\$2,200.00	\$0.00	-\$2,200.00
September 2021	\$2,200.00	\$0.00	-\$2,200.00
October 2021	\$2,200.00	\$0.00	-\$2,200.00
<b>TOTAL OWED</b>			<b>\$14,325.60</b>

I find that the Tenant is in rental arrears of \$14,325.60.

The Tenant also sought compensation for emergency repairs. A tenant may receive compensation for emergency repairs if the formal requirements of s. 33(5) of the *Act* have been met, namely by requesting reimbursement from the landlord and giving the landlord a written account of the emergency repairs accompanied by receipts. Further, s. 33(5) of the *Act* does not apply if any of the circumstances in s. 33(6) of the *Act* are present.

The Tenant has failed to demonstrate how they arrived at the amount claimed of \$1,763.65 nor have they provided a written accounting to the Landlords. The Tenant has not provided documentary evidence displacing the Landlords' assertion that they did not receive a written accounting. The Landlords are under no obligation to repay the Tenant any amount if the Tenant fails to provide a written account of the emergency repairs with all the relevant receipts. Accordingly, I find that the Tenant's have failed to make out their case with respect to compensation for emergency repairs and I dismiss their claim.

### Conclusion

I dismiss the Tenant's application to cancel the One-Month Notice to End Tenancy and hereby grant the Landlords with an order for possession pursuant to s. 55 of the *Act* effective **two (2) days** after it has been served on the Tenant.

I dismiss the Landlords claim for unpaid utilities without leave to reapply. I further dismiss the Tenants claim for compensation for emergency repairs without leave to reapply.

I find that the Tenant pay to the Landlords the amount of \$14,325.60, representing total unpaid rent from August 2020 to October 2021. Pursuant to s. 72(2), I order that the Landlord retain the security deposit of \$1,100.00 in partial satisfaction of the total amount owed by the Tenant as unpaid rent. Offsetting both, the amount owed by the Tenant for unpaid rent is **\$13,225.60**.

As the Landlords were largely successful on their application, they are entitled to their filing fee. I order that the Tenant pay **\$100.00** to the Landlords pursuant to s. 72(1) of the *Act*.

It is the Landlords obligation to serve these orders on the Tenant. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court. If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 14, 2021

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Residential Tenancy Branch