



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AKA FAMILY HOLDINGS LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issue – Notice to End Tenancy

At the outset of the hearing both parties confirmed that the notice to end tenancy that they wish to discuss is a One Month Notice to End Tenancy for Cause and not a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants applied for the later as the landlord had advised that the tenancy was ending due to unpaid utilities. Based on both parties confirming that the correct notice is a One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, I hereby amend the application pursuant to section 64(3)(c) of the *Act*.

### Issues to Decide

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order compelling the landlord to comply with the Act, regulation, or tenancy agreement?

Are the tenants entitled to the recovery of the filing fee?

### Background and Evidence

CW gave testimony on behalf of the landlords as follows. The tenancy began on December 15, 2018 with the current rent of \$2332.90 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on July 23, 2021 for the following reason:

*“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 testified that the property was completed in 2018 and that the gas costs were included with the Strata fees up until October 1, 2019 when per suite billing was implemented. The landlord now seeks to have the tenants pay the costs for the “hot water thermal heating”. The landlord testified that the tenants have refused to pay the fees and now wants to end their tenancy.

IS gave the following testimony. IS testified that their tenancy agreement includes gas and water. IS testified that the only utility charge the tenants are responsible for is electricity as per the tenancy agreement. IS testified that he doesn't think its fair that the landlord is trying to end the tenancy because he wants the tenants to bear the heating costs because the Strata have now chosen to separate gas costs from the Strata fees.

### Analysis

When a landlord issues a notice to end tenancy, they bear the burden of providing sufficient evidence to support the issuance of the Notice. The landlord has not provided sufficient evidence to end the tenancy for the following reasons. I find that there is not a breach of a material term of the tenancy. CW testified that the heating system uses gas to heat the water which then in turns heats the unit.

The boxes of water and natural gas are "checked off" in the tenancy agreement which in turn provide the heat. In addition, in the landlord's own documentation, it clearly demonstrates that heating costs were included with maintenance fees paid by the owner. As a result of the Strata committee deciding to split those costs from the regular monthly maintenance fees, does not entitle the landlord to offload the cost to the tenants. The original tenancy agreement signed on December 11, 2018 which states that along with the rent, the only additional costs the tenants are to pay are electricity and tenancy insurance, is still in effect.

Based on the above, the One Month Notice dated July 23, 2021 with an effective date of August 31, 2021 is cancelled. It is of no force or effect.

The tenants are entitled to the recovery of the filing fee. The tenants are entitled to a one time rent reduction of \$100.00 for the rent due on January 1, 2022.

### Conclusion

The One Month Notice to End Tenancy is cancelled. It is of no effect or force. The tenancy continues.

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: November 25, 2021

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Residential Tenancy Branch