



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC

### Introduction

The Tenant filed an Application for Dispute Resolution on September 30, 2021 seeking the Landlord's compliance with the legislation and/or the tenancy agreement. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on February 10, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

### Preliminary Matter

The Tenant stated that they delivered notice of this dispute to the Landlord in person; this included the evidence they prepared. They also sent a copy of the material to the Landlord's email address, that which is normally used for the payment of rent. The Landlord confirmed they received notice although the Tenant's late delivery in the week prior to the hearing was the first they knew about it. With that, the Landlord confirmed they did not provide documentary evidence of their own for this hearing.

I informed the parties in the hearing that the issue would proceed, being cognizant of the fact that timely disclosure of materials to the Landlord was possibly a prejudice to them in attempting to rectify the issue. Neither party objected to proceeding with the hearing on this basis, with both of them very aware of the issue which was the subject of many messages and discussions in the past.

Issue to be Decided

Is the Landlord obligated to comply with the *Act*, the *Residential Tenancy Regulation*, and/or the tenancy agreement?

Background and Evidence

The Tenant did not produce a copy of the tenancy agreement. They confirmed the basic details they entered in their Application: the tenancy started on January 15, 2018, and they pay \$1,600 on the first of each month. The Landlord confirmed these basic details in the hearing.

The Tenant rents the upper portion of the Landlord's property. Consistently over the duration of this tenancy, a different tenant has rented the lower portion. The utilities are registered in the Tenant's name. When a utility bill arrives, the Tenant calculates 60% as their own portion of the amount owing; the tenant downstairs would pay the remaining 40%. The Tenant would receive each bill – either monthly or every second month, depending on the utility – and then forward a copy of the bill to the tenant downstairs, along with their request for the calculated 40% amount. In the hearing, the Landlord confirmed they knew this was the arrangement in place.

The tenant downstairs was not making payments to the Tenant for utilities in 2021. This downstairs tenant moved into the lower unit in June 2021. They made a single payment for utilities at the outset of their tenancy, and after that nothing. The Tenant presented examples of their messaging to the Tenant to request payments. This string of messages shows the downstairs tenant objecting to higher bill amounts.

The Landlord in the hearing presented that the downstairs tenant did not pay rent for this timeframe as well. The Landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent in October 2021. The downstairs tenant moved out from the unit on November 16, 2021 with rent amounts still owing to the Landlord, and utility amounts owing to the Tenant.

The Tenant paid 100% of bill amounts owing from the time when the downstairs tenant stopped paying. They ask for the Landlord's payment for bill amounts properly owed by the downstairs tenant. The Tenant did not provide a specific request for a compensation dollar amount; rather, they made this Application when the downstairs

tenant still resided there, and they are wanting the Landlord to ensure the downstairs tenant was meeting their obligation to pay utilities.

After the downstairs tenant moved out in November, that lower basement unit was subject to flooding that required high-power fans and heaters to dissipate moisture. The Tenant presented that this required a lot of energy use, directly billed as a utility to them. In their prepared evidence, they included lists of billing amounts and two entries show billed amounts for that timeframe November through to January.

### Analysis

Under s. 62 of the *Act*, an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord or tenant comply with the legislation and/or the tenancy agreement.

There is nothing documented showing the precise agreement for the payment of the Tenant's utilities. I find it has been an informal arrangement between the Tenant and whomever resides downstairs in the separate unit. The Landlord was aware of this arrangement.

A landlord has the ability to end a tenancy for unpaid utilities where a tenancy agreement between the landlord and the tenant requires the tenant to pay utility charges to the landlord. That is set out in s.46(5) of the *Act*; however, that is not the situation here where this Tenant looks after the utility charges on their own, requiring cooperation from that downstairs tenant.

The Landlord presented they ended the tenancy for unpaid rent. A separate hearing process in that matter is pending. That affords the Landlord the opportunity to present that rent amounts are owing and they will have the opportunity to show that the Tenant had other monetary obligations relating to the tenancy. The Landlord and Tenant discussed this in this present hearing. While the Landlord may have had the ability to end the downstairs tenancy for utilities non-payment, that ended when the downstairs tenant moved out. That is now a separate matter of compensation from the downstairs tenant to the Landlord.

As for the Tenant's claim for the Landlord's compliance for the utilities from November to January, the parties were not able to resolve this in the hearing. The Tenant feels they are owed something for the energy consumed in the flooding cleanup; however,

the Landlord was not able to offer an amount and the parties could not agree on a suitable amount. At the end of the hearing the parties planned to discuss the issue further. I make no ruling on that piece because there is no reference to either the *Act* or the tenancy agreement. Should they choose, the Tenant is at liberty to file an application for a hearing to resolve any issue of monetary compensation.

### Conclusion

For the reasons above I dismiss the Tenant's Application, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 11, 2022

---

Residential Tenancy Branch