



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASCENT PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, LRE, MNDCT

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants seeking the following relief:

- an order cancelling 2 notices to end the tenancy for unpaid rent or utilities;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order limiting or setting conditions on the landlord's right to enter the rental unit; and
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Both tenants and an agent for the landlord company attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, I advised the parties that the Rules of Procedure specify that multiple applications contained in a single application must be related. I found that the primary application seeks an order cancelling 2 notices to end the tenancy, and the balance of the tenants' application is dismissed with leave to reapply.

The parties agree that all evidence has been exchanged, however I found that a lot of the landlord's evidentiary material is not relevant to the issuance of notices to end the tenancy for unpaid rent or utilities. All evidence related to the primary application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 14, 2022 was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 9, 2022 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

**The landlord's agent** testified that this tenancy began on May 1, 2019, and a new tenancy agreement was entered into for a fixed-term tenancy beginning on June 1, 2020 and reverting to a month-to-month tenancy after May 31, 2021. The tenants still reside in the rental unit. Rent in the amount of \$1,999.00 is payable on the 1<sup>st</sup> day of each month. On April 8, 2019 the landlord collected a security deposit from the tenants in the amount of \$999.50 as well as a pet damage deposit in the amount of \$999.50, both of which are still held in trust by the landlord. The rental unit is the main floor of a house, and the lower level is also rented. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on March 18, 2022 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail, and a copy has been provided by the tenants for this hearing. It is dated March 14, 2022 and contains an effective date of vacancy of March 31, 2022 for unpaid rent in the amount of \$1,803.66 that was due on March 1, 2021. The landlord's agent stated that it was a "type-o" and should read March 1, 2022.

Another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has been provided by both parties for this hearing, and it is dated May 9, 2022 and contains an effective date of vacancy of May 26, 2022 for unpaid utilities in the amount of \$2,869.88 following a written demand on (blank). The landlord's agent testified that the Notice was served on May 11, 2022 by registered mail, and a demand letter had been sent by email to the tenants by the landlord's assistant.

The tenant was offered a payment plan on May 18, 2022 for the outstanding utilities at \$717.00 per month, but the tenants didn't agree. The tenants are notified of the amount of the hydro due, but are not provided with a copy of the actual bill unless it is requested by the tenants. The hydro bills are issued by the utility company every other month.

A copy of a tenant ledger has also been provided by the landlord for this hearing, running from January 1, 2022 to May 5, 2022 showing rent charges, hydro charges and payments made. The landlord's agent testified that the amount of arrears today are \$2,869.68 including utilities.

**The first tenant** (CAT) testified that the landlord's agent is incorrect about the rental unit; it's a side-by-side duplex.

This is not a case of tenants refusing to pay rent or utilities, but confusion as to what is owed. According to the tenant's bank statement, a copy of which has been provided for this hearing the tenant spotted some mistakes.

In May, 2019 the tenant paid rent for June 1. November 6, 2020 was paid by e-transfer in the amount of \$1,999.00. The tenant emailed the landlord for confirmation, but the landlord company did not confirm it.

On November 25, 2020 the tenant prepaid rent so that there would be no worry about Christmas.

The landlord took money out even though the tenant had paid rent early and charged the tenant with an NSF fee as well as a fee from the tenant's financial institution.

The tenant kept going with rent balances each month, and there were no issues with the rent. The tenants are on Income Assistance which is monitored to ensure the rules are followed.

There were too many different balances, and the Ministry wanted clarification about charge-backs that the tenants were getting; the rent and hydro were combined.

In July, 2021 the other tenant moved in and started paying \$400.00.

The tenant was trying to get clarity, and is on a fixed income. Emails have also been provided for this hearing.

Starting in March, 2021 the tenant was very confused, and angered at trying to clear it up. The amount of charges were frustrating and uncalled for. There were a lot of delays with the landlord's management team about charge-backs to 2022. The tenant couldn't find where the error was. The tenants didn't get a rent receipt indicating a balance due.

There was no proper paperwork with respect to utilities. The tenant tried to add up everything, looking back on documents to see what is actually owing. The tenant had to

provide information to the Ministry in order to continue receiving support. The Ministry said the contract didn't make sense.

The tenants have also provided a copy of a Tenant Ledger dated from January, 2021 to March 21, 2022, which was printed on March 21, 2022 but was not provided to the tenants before then.

**The second tenant** (CJR) testified that the first tenant is correct. Also, when bills are paid a person doesn't just give money whenever they ask but would want to see the bill before paying it.

The landlord sent the tenants a letter saying that the tenancy agreement says that the tenants have to pay, but the tenants need better communication so this doesn't happen again.

The tenants like living in the rental unit, but no one talks to the tenants. The tenants never received any letter about charge-backs for hydro, and never received a hydro bill except one with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of that bill has been provided for this hearing in the amount of \$772.29 and the billing date is February 14, 2022, running from December 11, 2021 to February 10, 2022.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

I have reviewed both notices to end the tenancy, and I find that they are in the approved form.

Once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenants have 5 days to pay the amounts in full, in which case the Notice is of no effect. If the tenants fail to pay the amount(s) in full or dispute the Notice within that 5 day period, the tenant is conclusively presumed to have accepted the tenancy and must vacate the rental unit within 10 days, which is the effective date of the Notice. In this case, the first Notice was served by registered mail on March 18, 2022 which is deemed to have been served 5 days later, or March 23, 2022. The tenants disputed it on March 25, 2022 which is within the 5 day period.

The second Notice was served on May 11, 2022 by registered mail, again deemed to have been served 5 days later, or May 16, 2022. The tenants' amendment to dispute it was filed on May 20, 2022 which is also within the time permitted under the *Act*.

The *Act* also specifies that a landlord may treat unpaid utilities as unpaid rent 30 days after giving the tenants written demand to pay, meaning that a landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent not earlier than 30 days after written notice to the tenants to pay the utilities.

**46 (6) If**

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In this case, the Notice does not indicate when the written demand for the payment of utilities was made. Also, the landlord's agent testified that the hydro bills are not given to the tenants unless requested, but an email indicating what is due. The landlord's written statement prepared for this hearing states that the most recent email regarding the hydro bill was sent on May 5, 2022 with a copy of the bill, however no emails to the tenants indicating such has been provided. Further, if I consider that, the 10 Day Notice was signed by the landlord on May 11, 2022, which is not 30 days after the written request and bill had been sent to the tenants. I am not satisfied that the tenants were given a written demand for the payment of utilities 30 days prior to issuing the Notice, and therefore I cancel it.

The first tenant testified that this is not a refusal to pay, but confusion as to the amounts owed. It is not for me to complete accounting to give a decision with respect to what is owed, but whether or not the landlord has established that the tenants did not pay the rent in full within 5 days of receiving the first 10 Day Notice. It states that the tenants failed to pay rent in the amount of \$1,803.66 that was due on March 1, 2021, and I accept that the year was a typing error. However, I have reviewed the Tenant Ledgers and the amount shown as outstanding on March 1, 2022 includes multiple charges for utilities. There is no evidence to satisfy me that the landlord gave demands for the payment of utilities prior to issuing the first 10 Day Notice, and therefore, those amounts cannot be treated as unpaid rent.

Considering the relevant evidence, I find that the landlord has failed to establish that the tenants were in arrears of **rent** the sum of \$1,803.66 when the first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued, and I cancel it.

### Conclusion

For the reasons set out above, the tenants' applications for the following relief are dismissed with leave to reapply:

- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- for an order limiting or setting conditions on the landlord's right to enter the rental unit; and
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 14, 2022 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 9, 2022 is hereby cancelled and 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: June 20, 2022

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Residential Tenancy Branch