# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR, OLC, MNDCT, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the "Application") on March 10, 2022:

a. to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice");
b. to ensure the Landlord's compliance with the legislation and/or the tenancy agreement;
c. compensation for monetary loss or other money owed;
d. a return of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 24, 2022. Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions on the process and present oral testimony during the hearing.

At the outset of the hearing, each party confirmed they received the prepared documentary evidence of the other in advance of the hearing date. On this basis, I proceeded with the hearing as scheduled.

Preliminary Matters

The immediate issue requiring resolution between these two parties is the 10-Day Notice issued on March 9, 2022 whereby the Landlord seeks to end the tenancy.

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending. By Rule 6.2, I do not consider the Tenant's claim for compensation. By Rule 2.3, I find this issue is unrelated and I amend the Tenant's Application to exclude this piece. The Tenant has leave to reapply on that specific ground.

Issues to be Decided

Is the Tenant entitled to a cancellation of the March 9, 2022 10-Day Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

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

Is the Tenant entitled to recovery of the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in place, showing it as a fixed-term tenancy from September 1, 2021 to August 31, 2022. This was the second iteration of an agreement between the parties, with the tenancy actually starting on August 15, 2020. The Tenant in the hearing stated the agreement was not that of a fixed-term tenancy; however, the agreement signed by the Landlord on July 26, 2021 and the Tenant on July 28, 2021 states it is. The agreement specifies rent of $1,500 payable on the first day of each month. As of the date of the hearing, the amount of rent is at $1,522.50 as per a rent increase that took effect on January 1, 2022.

Electricity/hydro is not included in the rent. The agreement provides: “Tenant is responsible to pay 25% of Electricity/Hydro.”

The payment of this utility by the Tenant was the subject of a previous dispute resolution hearing from the Tenant’s prior Application in which they sought the Landlord’s compliance with the legislation and/or the tenancy agreement. The Tenant provided the Residential Tenancy Branch decision dated January 10, 2022. Through 2020 to 2021, the Landlord did not make demand for payment of the utilities until May-July 2021, several months after the tenancy started in August 2020. The Landlord took the position that they could make a yearly “lump sum” request for payment of utilities; however, the Tenant submitted it was fundamentally unfair for the Landlord to rely on this for the payment of that particular utility, arising only as it did as a “sudden demand” when the parties were negotiating a second fixed-term tenancy.

The Arbitrator found the agreement was essentially “silent as to when the payments would be demanded or come due.” With the Landlord’s demand then arising “over 10 months after the start of the tenancy”, the Arbitrator found “it would be inequitable to allow the landlord to rely upon the silence in the tenancy agreement they prepared and interpret it in a manner that benefits them.” The Arbitrator ordered the Landlord’s compliance by “[the Landlord] setting out in writing in the tenancy agreement the period utilities will be payable.”

In this present hearing, the Tenant submitted relevant portions of the *Act* that allow for parties to amend an agreement. The parties attempted to finalize a utility payment period in writing; however, after passing drafted language back and forth at least 2 times in early 2022, the matter remained unsettled. The Tenant pointed to these drafts as the Landlord dodging their legal obligations, particularly when it comes to any remaining utilities left owing at the end of the tenancy.

The Landlord sent an email to the Tenant on February 1, 2022, titled “Bc Hydro bill”. This sets out the billing period of two months, the billed amount, and makes the calculation for 25% at $83.72, and provides: “due day: February 18, 2022.” The Landlord attached a copy of that bill for the Tenant’s reference.

The Tenant stated in their written submission: “There was no written demand for payment on Feb 1, 2022. . .This is simply an acknowledgement that the landlord has received the bill from BC hydro.” The Tenant also submitted they did not complete an

"Address for Service" form and that "puts the landlord in breach of the Requirements For This Notice."

The Landlord sent a text message to the Tenant on February 23, inquiring about payment: "I haven't got the payment. Please let me know when and how are you going to pay." The Tenant responded with an email stating: "Since there is no agreement in place to state when the hydro bills are to be paid by the tenant, I will pay when there is a mutually agreed upon amendment in place."

The Tenant responded on that same day:

> I will pay when there is a mutually agreed upon amendment in place. Until then, you telling me when to pay means nothing. There is no formal time frame on when I as the tenant need to pay my portion of the Hydro Bill in writing.

Following this, the Landlord issued a 10-Day Notice on March 9, 2022, setting the move-out date (*i.e.*, end-of-tenancy date) at March 19, 2022. This was for the amount of $83.72, "following written demand on: 01/02/2022." The Tenant filed their Application for Dispute Resolution on March 10, 2022.

The Landlord submitted evidence of two other utility payment requests they made to the Tenant:

- Prior to 10-Day Notice, and prior to the previous Arbitrator decision of January 10, 2022, the Landlord had asked for payment of a prior bill, notifying the Tenant of this via email on December 6, 2021. This is titled "Bc hydro bill due in December." This was asking for payment of an attached invoice, and stating: "Due day is December 21, 2021", as it appears on that attached bill. The Tenant made their payment to the Landlord on December 20, 2021.

- After this, on April 1, the Landlord asked the Tenant for payment of the next utility bill, specifying the "due date of this payment is before/on April 20,2022." The title of that message was: "Sharing of BC Hydro billing for Jan.27 to Mar 28 of 2022." Following this, they sent a written signed request for payment, specifying: "Again, the payment will due in 30days." To this, the Tenant responded via email that "

  > there is no agreed upon payment due date for the tenant share of Hydro. I do not agree with your demands and timelines that you continue to pressure me with and threaten me with tenancy notices that are unjustified

In their written submission, in a more summary fashion, the Tenant stated: landlord failed to follow all established rules and procedures set out by the RTB regarding a 10 Day Notice for unpaid utilities." Further:

> There are no written, agreed upon terms regarding the payment of shared hydro bills in the tenancy agreement so this notice should have never been issued. The tenant isn't in violation of not paying utilities on time because there are not terms on when shared utilities are to be paid.
>
> Landlord did not issue a notice in writing stating how much the tenant owes and that the payment is due within 30 days. Even if there were terms established for payment of utilities, the landlord did not follow the rules of issuing such a serious notice.

On March 10, in response to the 10-Day Notice, the Tenant emailed to the Landlord to state:

> You are required by law to issue a written 30 day notice for payment of any outstanding payment of utilities (on paper) which you did not do. This makes the notice invalid.
>
> On February 19, 2022 you should have written a 30 day notice of collection of the utility sharing fee however you did not . . .. This is not the appropriate mandate required by the Tenancy Act.
>
> You did not issue a 30 day written notice on paper which is clearly stated in the tenancy act. You cannot issue a 10 Day Notice to End Tenancy for unpaid Utilities in this manner.

In the hearing, the Tenant presented their submissions as set out above. They reiterated the Landlord's email from February 1 is "not sufficient", with "no defined day when a payment is due". The time period of 30 days is for a "reminder".

In the hearing, the Landlord re-stated their submissions as presented and made reference to specific dates, and the communication they gave to the Tenant on each of those dates, as set out above. They stated the date of February 18 in their February 1 email was the utility's own specified due date, [*i.e.*, that date that appears on the bill]. They discussed the matter with the Residential Tenancy Branch before issuing the 10-Day Notice on March 9, 2022.

The Landlord also summed up the background to the whole situation, with reference to the prior hearing decision. The Tenant had been paying before the invoice due date; however, the Tenant then refused to pay the regular bill because there were no amendments yet completed for the tenancy agreement. They provided that they could not force the amendments onto the Tenant. The Landlord acknowledged their past error in making a demand for payment of a collection of bills in the year prior.

In closing, the Landlord drew attention to their request to the Tenant for payment of the January – March 2022 invoice, starting on April 1, 2022. They sent a written reminder to the Tenant on May 1, 2022. The Tenant's response was to state again there was no agreed upon payment due date set in the tenancy agreement. The Tenant re-stated they would "issue payment in the near future as I have in the past."

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In s. 46(6), the *Act* sets out the right of a Landlord to end the tenancy in a situation where utilities are unpaid:

> 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.

From the tenancy agreement in place, the Tenant is obligated to pay 25% of the Electricity/Hydro. This is explicit on the second page of the agreement. The previous hearing wherein the Arbitrator ordered the Landlord to write "the period utilities will be payable" does not nullify the obligation of the Tenant to pay this particular utility.

By February 1, the date on which the Landlord emailed the Tenant about the most recent utility amount, the Tenant was well aware that bills come due and need payment. The Tenant was also aware they are obligated as per the tenancy agreement to pay 25%, as calculated by the Landlord. I can conclude peremptorily that when the Landlord set out explicitly an amount of 25%, this was informing the Tenant of their obligation to pay that utility amount. Further, from the previous hearing between the parties, the Tenant was aware that bills would be a regular occurrence in the months to follow. They took no issue with this form of request from the Landlord in December 2021.

The prior decision, ordering the Landlord to establish a payment period for utilities was not a license for the Tenant to shirk the responsibility of paying that utility when requested. The Tenant was at pains to deny payment to the Landlord following the January 10 decision, insisting that the agreement was silent on a payment period.

Rather, overriding the prior decision from the Arbitrator is s. 46(6), giving the Landlord the right to end the tenancy for an unpaid utility. This is where the right of the Landlord is set out, wherein they "may treat the unpaid utility charges as unpaid rent". Linking this back to the positive obligation set by s. 26, this requires payment "whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent." The Tenant did not submit that the prior decision essentially suspended their obligation to pay the utility charges; however, I find they used that decision to essentially stall their obligation to pay. I find they did so in an unreasonable manner, with no authorization from the Arbitrator to suspend or otherwise avoid the obligation until the agreement language was settled.

On February 23, when asked again by the Landlord for a timeframe, the Tenant responded:

> I will pay when there is a mutually agreed upon amendment in place. Until then, you telling me when to pay means nothing. There is no formal time frame on when I as the tenant need to pay my portion of the Hydro Bill in writing.

In the simplest terms, the Tenant had no right to make this assertion. The prior decision was not an instruction or approval to withhold utility payments as the Tenant is making clear in this statement. Conversely, the tenancy agreement still sets out their obligation for 25% of the utility. I find this is a tacit refusal by the Tenant to pay the utility as requested by the Landlord, within a reasonable timeframe.

The Tenant apparently took no issue with the Landlord's identical messaging in December 2021. They paid that bill on December 20.

In this situation, a landlord may give a notice to end the tenancy, granted by s. 46(6).

I find the utility remained unpaid for more than 30 days after the Landlord gave a written demand. In response to the 10-Day Notice, the Tenant asserted that the February 1st email from the Landlord did not serve as "written notice", nor did it specify a 30-day timeline. The Tenant stated directly to the Landlord on March 10: "You are required by law to issue a written 30 day notice for payment of any outstanding payment of utilities

(on paper) which you did not do." This was the Tenant's immediate response to the Landlord, to state: "This makes the notice invalid."

I find the *Act*, which governs above all other materials provided for informational purposes to a landlord or a tenant, is not explicit that a demand from a landlord specifically set out a 30-day timeline. Rather, s. 46(2) authorizes a landlord to give a notice to end the tenancy *after 30 days*. I find the 10-Day Notice is not invalid for this reason, as the Tenant presents. The Landlord waited for a period of over 30 days from their initial demand to the Tenant on February 1st. Even after a second query to the Tenant on February 23 did the Landlord wait and then issue the 10-Day Notice on March 9, 2022.

The Tenant also raised the point that the demand from the Landlord must be "written", meaning it must be "on paper". I am satisfied the parties had a routine use of email as a means of communication between them. The Tenant responded the following day, and on an instantaneous basis to all communication from the Landlord, and this is confirmation to the Landlord that the message was received. There was nothing prohibiting email as a means of communication between the parties.

Further, I find the intent and substance of the email was clear to the Tenant. I find the message was clear and placed the Tenant on notice that payment was required. I follow an expansive meaning of the term "written", finding that for those purposes, email will suffice, and this was the case for the Landlord's message to the Tenant on February 1st. The fact that the Tenant confirmed the message was received, with a clear purpose therein, satisfies the requirement in s. 46(6)(b). That such notice be "on paper" is not a strict requirement, and my finding that the Landlord issued a *written* demand overrides any published guideline. Again, the wording in the *Act*, and my application of it, overrides what may be termed a best practice recommendation.

Thus stated, I find the Tenant was incorrect in stating to the Landlord: "You did not issue a 30 day written notice on paper which is clearly stated in the tenancy act". That requirement does *not* appear in the *Act*. That essentially is the basis for the Tenant seeking cancellation of the 10-Day Notice. On that assertion, I dismiss the Tenant's Application.

The *Act* s. 46(6) states that a landlord may serve a notice given that certain conditions are in place. This is a notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice. Above, I find the conditions of s. 46(6)(a) and (b) were in place.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay that overdue utility, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied that when the landlord issued the 10-Day Notice on March 9, 2022 the Tenant had utilities owing. They did not pay that within 5 days. Because of this, and because I do not accept their submission that they were justified in not paying the utility amount as required by the Landlord, the Tenant's Application to cancel the 10-Day Notice is dismissed. The tenancy is ending.

Under s. 55 of the *Act*, when the tenant's Application to cancel a notice to end tenancy and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession. On my review, I find that the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an order of possession.

Given that the tenancy will end, I dismiss the Tenant's claim for the Landlord's compliance with the *Act* and/or tenancy agreement, without leave to reapply.

Because the Tenant was not successful on their Application, I make no award for reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply.

I grant an Order of Possession to the Landlord, **effective TWO DAYS after they serve it upon the Tenant**. Should the Tenant fail to comply, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be 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 s. 9.1(1) of the *Act*.

Dated: June 27, 2022

Residential Tenancy Branch