



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MENETHIL PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, CNR-MT

### Introduction

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

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46.

The landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 62 minutes from 11:00 a.m. to 12:02 p.m.

The landlord's agent and the tenant confirmed their names and spelling. The landlord's agent provided her email address, and the tenant provided her mailing address for me to send this decision to both parties after the hearing.

The landlord stated that she is a property manager, employed by the landlord company ("landlord") named in this application. She said that the landlord is an agent for the owner. She confirmed that she had permission to represent the landlord and owner at this hearing. She provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord's agent and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them. Neither party made any accommodation requests.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord's agent stated that she provided evidence for this hearing, including a 10 Day Notice from April 2022 and a "bug invoice." The tenant confirmed receipt of the above evidence from the landlord. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidence.

I informed the landlord's agent that I did not receive the above evidence from the landlord at the RTB, but the tenant provided a copy of the 10 Day Notice from April 2022. Both parties settled the 10 Day Notice and both parties agreed regarding the bug invoice of \$180.00 at this hearing. Therefore, I did not ask the landlord's agent to provide a copy of the above documents to me after this hearing, as I did not find it necessary to do so, for the above reasons.

The tenant repeatedly stated that she had a monetary claim against the landlord. I repeatedly informed the tenant that she did not apply for any monetary orders in her application so I could not deal with them at this hearing. The tenant confirmed her understanding of same. Further, the tenant did not provide any documentary evidence regarding her monetary claims for this hearing, so I did not amend her application to add any monetary claims. Moreover, the landlord does not have proper notice of any monetary claims by the tenant, or an opportunity to properly respond with evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the legal name and spelling of the landlord. The landlord's agent consented to this amendment during this hearing. The tenant did not object to same. I find no prejudice to the tenant in making this amendment.

#### Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

##### 6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout the conference, the tenant interrupted me, spoke at the same time as me, used profane language, and laughed while the landlord's agent and I were speaking. I cautioned the tenant multiple times regarding the above inappropriate behaviour, but she continued with same.

This hearing took longer because of the disruptive behaviour of the tenant. Despite the tenant's behaviour, I allowed her to attend the full hearing, in order to provide her with a full opportunity to present her application and respond to the landlord's claims.

#### Preliminary Issue – Adjournment Request by Tenant

At the outset of the hearing, the tenant requested an adjournment. She then confirmed that she was ready to proceed with this hearing. She said that she was ready to respond to the landlord's 10 Day Notice from April 2022, and the landlord's claims for unpaid rent and utilities, until August 2022. She claimed that she did not have a chance to submit all of her evidence, including invoices, for this hearing because the landlord kept serving her with more notices to end tenancy for unpaid rent and the unpaid rent balance kept increasing each month.

During the hearing, I advised both parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I informed the tenant that she filed this application on her own accord on April 14, 2022. I notified her that she had ample time to provide evidence for this hearing, which occurred over four months later on August 16, 2022. I informed her that she repeatedly affirmed that she was ready to proceed with this hearing and discuss the 10 Day Notice and unpaid rent and utilities with the landlord.

I notified both parties that the tenant agreed that she filed this application late, to dispute the landlord's 10 Day Notice, on April 14, 2022, after claiming that she received it on April 2, 2022. I find that a further delay in this hearing date would prejudice the landlord, who was ready to proceed with this hearing. I informed both parties that this hearing involves urgent end of tenancy and order of possession issues, which are priority issues at the RTB. The tenant received an earlier hearing date for the above reason.

### Settlement Terms

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise, and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of their dispute:

1. Both parties agreed that this tenancy will end by 6:00 p.m. on August 18, 2022, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that all of the landlord's notices to end tenancy, issued to the tenant, to date, are cancelled and of no force or effect;
3. The tenant agreed that this settlement agreement constitutes a final and binding resolution of her application.

These particulars comprise the full and final settlement of this dispute for both parties. Both parties affirmed that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final and binding and enforceable, which settles this dispute.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this lengthy 62-minute hearing. Both parties had opportunities to ask questions and to negotiate and discuss the settlement terms in detail.

Pursuant to section 55 of the *Act*, I am required to determine whether the landlord is entitled to a monetary order for unpaid rent and utilities, since the tenant filed this application to dispute the landlord's 10 Day Notice. Both parties were unable to settle the unpaid rent and utilities issue at this hearing, despite being given multiple opportunities for same, and asked that I make a decision about it. Below are my findings.

### Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

### Background and Evidence

Both parties agreed to the following facts. Monthly rent and utilities in the total amount of \$1,000.00 is payable on the first day of each month. The tenant continues to reside in the rental unit. A previous RTB hearing regarding this rental unit and tenancy occurred on April 12, 2022, after which a decision of the same date was issued by a different Arbitrator. That previous decision cancelled the landlord's 10 Day Notice from January 2022 and continued this tenancy, because the landlord did not attend the previous hearing and the tenant attended. The file number for that previous hearing appears on the cover page of this decision.

The landlord's agent claimed that rent of \$800.00 plus an additional \$200.00 for utilities is payable each month by the tenant. The tenant stated that there is no separation between rent and utilities, and that a total of \$1,000.00 is payable by her, for both rent and utilities, each month to the landlord.

The landlord's agent testified regarding the following facts. The tenant owes the following amounts for rent and utilities: \$1,040.00 for April 2022 (\$40.00 balance is from prior to April 2022 and \$1,000.00 is for April 2022), \$1,000.00 for each of May, July and August 2022, and \$350.00 for June 2022, totalling \$4,390.00. The tenant is entitled to a credit of \$180.00 for a bug invoice that the tenant paid. The landlord seeks a monetary order of \$4,210.00 for unpaid rent and utilities from the tenant.

The tenant testified regarding the following facts. She agrees that she owes rent and utilities of \$40.00 to the landlord, from prior to April 2022. She agrees that she owes rent and utilities of \$350.00 for June 2022 to the landlord. She disputes that she owes full rent and utilities of \$1,000.00 per month for April, May, July, and August 2022. She agrees that she owes some rent for the above months, but she does not know how much. She did not live in the rental unit from April 3 or 4 until April 28 or 29, so she does not owe the full amount of rent and utilities for April 2022. She does not owe the full amount of rent for August 2022, because she is agreeing to leave early on August 18, 2022. She has other invoices that she paid but she did not provide them for this hearing, except for the one bug invoice for \$180.00. At the previous RTB hearing in April 2022, the tenant abandoned the rental unit.

### Analysis

I reviewed the previous RTB decision, dated April 12, 2022, a copy of which was not provided by the tenant for this hearing. I located that decision in the online RTB dispute system, during this hearing. That decision stated the following at page 2, which I read aloud during this hearing:

*No one attended the hearing for the Landlord in support of the 10 Day Notice dated January 11, 2022. The 10 Day Notice is therefore cancelled and the tenancy will continue until it is ended in accordance with the Act*

I find that the previous RTB decision did not provide the tenant with permission to deduct any amounts from rent or utilities, by way of an Arbitrator's order or for emergency repairs, pursuant to section 33 of the *Act*. I find that the previous RTB decision did not declare that the tenant abandoned the rental or that the tenant was not required to pay full rent or utilities to the landlord each month for this tenancy.

Section 26 of the *Act* requires the tenant to pay rent when it is due under a tenancy agreement. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

At this hearing, both parties agreed that rent and utilities, totalling \$1,000.00, is payable on the first day of each month, from the tenant to the landlord. Accordingly, I find that the tenant is required to pay full rent and utilities of \$1,000.00 by the first day of each month to the landlord for this rental unit and tenancy.

At this hearing, the tenant agreed that she failed to pay rent and utilities to the landlord, and she agreed to pay \$40.00 from prior to April 2022 and \$350.00 for June 2022, to the landlord. Accordingly, I find that the landlord is entitled to \$390.00 total, for the above unpaid rent and utilities from the tenant, as the tenant agreed to pay the above amount during this hearing.

At this hearing, the tenant agreed that she failed to pay rent of \$1,000.00 for each month for April, May, July, and August 2022 to the landlord. I find that the tenant is required to pay full rent and utilities to the landlord each month, unless the tenant has an order from an Arbitrator to deduct rent or utilities, or emergency repairs are deducted as per section 33 of the *Act*. I find that both do not apply in this case.

I find that the tenant did not abandon the rental unit, as the tenant agreed that she was still residing at the rental unit for a few nights each week and she still has her belongings in the rental unit, so she would be vacating on August 18, 2022. Regardless of the pest control issue and the tenant's temporary absences from the rental unit, I find that the tenant did not vacate the rental unit and she still owes full rent and utilities to the landlord each month. Regardless of whether the tenant agreed to vacate the rental unit on August 18, 2022, which has not yet occurred, I find that the landlord is entitled to full rent and utilities for August 2022 from the tenant, as rent and utilities are due on the first day of each month.

On a balance of probabilities and for the reasons stated above, I find that the landlord is entitled to a monetary order for \$4,210.00 for unpaid rent and utilities, against the tenant. This includes \$1,000.00 for each month for April, May, July and August 2022, totalling \$4,000.00. This also includes \$40.00 from prior to April 2022 and \$350.00 for June 2022, totalling \$390.00. The above includes a credit of \$180.00 for a bug invoice that the tenant paid, that the landlord agreed to deduct from unpaid rent and utilities, during this hearing.

### Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 6:00 p.m. on August 18, 2022. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 6:00 p.m. on August 18, 2022. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

All of the landlord's notices to end tenancy, issued to the tenant, to date, are cancelled and of no force or effect.

I issue a monetary Order in the landlord's favour in the amount of \$4,210.00. Should the tenant fail to comply with this Order, this Order may be filed in 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: August 16, 2022

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Residential Tenancy Branch