



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: **CNC**
CNR-MT

Landlord: **MNU-DR, OPU-DR, FFL**

Introduction

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”).

The tenant filed two applications, seeking:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66.

The landlord filed a direct request seeking:

- A monetary order for unpaid rent and/or utilities by direct request pursuant to section 55;
- An order of possession following the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities that was not disputed, pursuant to section 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both parties attended the hearing and acknowledged receipt of one another's application for dispute resolution packages. The tenant's advocate also acknowledges that in her package, the tenant received a copy of an interim decision made on April 20, 2022, by an adjudicator of the Residential Tenancy Branch.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

On March 31st, the tenant was served with a 1 Month Notice to End Tenancy for Cause. The tenant filed an application to dispute this notice on April 8th. On May 12th, both the landlord and the tenant signed a mutual agreement to withdraw the 1 Month Notice to End Tenancy for Cause and that the application to dispute the notice is also withdrawn. This written agreement was provided to me as evidence by the landlord. Based on the written agreement, I dismiss the tenant's application to cancel the notice to end tenancy for cause issued on March 31, 2022, as I determine the notice to end tenancy has been withdrawn by consent of both the landlord and the tenant.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities be upheld or cancelled?

Can I extend the time to dispute the notice?

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

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began on March 15, 2019, with rent set at \$950.00 per month, payable on the first day of each month. Pursuant to clause 1 of the addendum to the tenancy agreement:

1/3 of the total cost of utilities is to be paid by the tenant. As of March 15, 2019, this is set at a rate of \$78 per month; Which may go up or down depending on usage.

The landlord testified that both the natural gas (Fortis) and electricity (BC Hydro) bills are paid in equal monthly payments and that the plans are annually reviewed in April of each year. The first year, the equal payments were short by \$9.00 and by \$52.00 the next year. The landlord did not bother collecting 1/3 of the shortfalls from the tenant for the first 2 years.

In 2022, the landlord was notified that the equal payments for BC Hydro were short by \$297.06 and the Fortis bill by \$337.66. The landlord testified that she provided the tenant with a written demand to pay her 1/3 of the outstanding shortfalls, a total of \$211.57 on April 20th, by placing a copy of the demand letter in the mailbox she shares with the tenant. The landlord testified that the service was witnessed by MW, who provided a written statement. The landlord testified that she re-served the tenant with a copy of the utility bills on May 2nd by text message after speaking directly with the tenant about the increased utility charges.

The landlord testified that the tenant did not pay the shortfall of \$211.57 and on May 30, 2022, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by placing a copy of it in the mailbox she shares with the landlord. The landlord testified that the tenant purposefully didn't remove this piece of mail from the shared mailbox although the tenant accepted other pieces of mail addressed to her. In evidence, the landlord provided photos of the mailbox's contents on June 3rd, June 4th and June 6th. The landlord also submitted evidence to corroborate her testimony that the tenant also refused to pick up the direct request package sent to her on June 24th and July 4th. On July 15th, the direct request package was returned to the landlord as undelivered.

The landlord testified that for June 2022, the tenant paid the \$950.00 for rent plus only \$76.00 in utilities not the \$105.61 as noted in the April 20th letter. The landlord did not provide any receipts for use and occupancy because payments were made electronically, and the landlord never advised the tenant that accepting rent reinstated the tenancy or that the landlord wished for the tenancy to continue.

The tenant gave the following testimony. She never received the landlord's notice to end tenancy. She ordered a bunch of books and found them in the mailbox on June 9, 2022, but nothing from the landlord. When she checked the mailbox on June 15th, that's when she discovered the notice to end tenancy. The tenant usually checks the mailbox once a week, either on a Thursday or Friday. The notice to end tenancy was not in the mailbox when she would have checked on June 2nd or 3rd. She only gets 2 pieces of mail a week and doesn't check the mailbox daily.

June 15th, the same day she found the landlord's notice to end tenancy, the tenant contacted the advocate appearing with her for today's hearing. That advocate stated that they applied to dispute the notice to end tenancy five days later, on June 20th.

The tenant argues that she never received the written demand on April 20th either. The tenant never took issue with paying increased utilities, all she wanted was copies of the statements for Fortis and BC Hydro which she never got. The tenant argues that the reason the utilities have increased is because the landlord's boyfriend has moved in and because the landlord has now installed a hot tub. Both factors increase the amount of gas and electricity usage.

Analysis

The tenant seeks leave to extend the time to dispute the landlord's notice to end tenancy pursuant to section 66 of the Act.

Section 66 states:

Director's orders: changing time limits

66 (1)The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

(2)Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) [*landlord's notice: non-payment of rent*] for a tenant to pay overdue rent only in one of the following circumstances:

- (a)the extension is agreed to by the landlord;
- (b)the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3)The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

(bold emphasis added)

The parties disagree on when the landlord served the tenant with the notice to end tenancy by placing it in the shared mailbox. The landlord testified she placed the notice to end tenancy in the tenant's mailbox on May 30, 2022, which the tenant denies. Based on the evidence before me which includes photos taken by the landlord on June 3rd, 4th and 6th, and the tenant's testimony that she only checks the mailbox once a week; I find that, on a balance of probabilities, the landlord's version of events is most likely the most accurate. I deem the notice to end tenancy served on June 2nd, three days after it was placed in the tenant's mailbox, in accordance with sections 88 and 90 of the Act. The effective date stated on the notice to end tenancy is June 12, 2022, which would be correct, taking into consideration the 3 additional days it takes for me to deem the notice to end tenancy served.

The tenant filed her application to dispute the notice on June 20, 2022. This date is 8 days beyond the effective date of the notice. As section 66(3) of the Act does not allow the director to extend the time limit to make the application to dispute the notice, the request for leave cannot be granted. I must uphold the landlord's notice to end tenancy and consequently, I issue an Order of Possession to the landlord. As the effective date stated on the notice has passed, the landlord is entitled to an Order of Possession effective 2 days after service.

The landlord seeks an order for payment of the outstanding utilities for the previous year when the equalized payments for hydro and natural gas were short. Pursuant to the tenancy agreement addendum, the landlord argues that the tenant is responsible for reimbursing the landlord for 1/3 the shortfall in the amount of \$211.57 from the previous year, and the additional \$29.16 for increased utility fees for June 2022.

The clause in the addendum reads:

1/3 of the total cost of utilities is to be paid by the tenant. As of March 15, 2019, this is set at a rate of \$78 per month; Which may go up or down depending on usage.

In reviewing this clause, I accept that the tenant is to pay equalized payments for utilities based on the annual statements. When the statements are received and the landlord provides them to the tenant, the equalized payments either go up or down. The landlord testified that the tenant paid rent for the month of June 2022 in the amount

of \$950.00 plus utilities in the amount of \$76.00. I accept that on April 20, 2022, the landlord notified the tenant that the equalized payments were supposed to increase from \$76.00 to \$105.61 and the tenant paid the lesser amount. As the parties clearly agreed to adjusting the equalized payments each year, I find the landlord is entitled to the additional **\$29.61** for utilities for the month of June 2022 as sought in her application.

The clause also states that 1/3 of the **total cost** of utilities is to be paid by the tenant. I have reviewed the BC Hydro bill indicating a shortfall of \$297.06 and the Fortis bill indicating a shortfall of \$662.43 [$\$1,299.66 - 962.00 = \337.66]. I find the tenant is contractually obligated to compensate the landlord with 1/3 the utility shortfalls of \$211.57. [$\$297.06 + 337.66 / 3 = \211.57]. The monetary order awarded to the landlord is increased by this amount.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security in the amount of \$475.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain \$341.18 of the tenant's security deposit and pet damage deposit in full satisfaction of the monetary award.

Item	Amount
June 2022 utility shortfall	\$29.61
2021 utility shortfall	\$211.57
Filing fee	\$100.00
Less security deposit	(\$475.00)
Total	(\$133.82)

Conclusion

I grant an Order of Possession to the landlord effective 2 days after service on the tenant. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

The landlord is to retain \$341.18 of the tenant's security deposit. The remainder of the security deposit is subject to the provisions of section 38(1) of the Act.

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 08, 2022