



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR, FFT

### **Introduction**

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and to recover the fee for filing the Application for Dispute Resolution. At the hearing the Tenant stated the Tenants wished to withdraw the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, as they have vacated the rental unit. She stated that the Tenants would like to recover the fee for filing the Application for Dispute Resolution.

The Landlord and the Tenant agree that the Dispute Resolution Package was served to the Landlord, via registered mail, in May of 2022.

The Tenants submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to the Residential Tenancy Branch. The Tenant stated that this document was not served to the Landlord as evidence for these proceedings. The Landlord stated that she has a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and she agreed that it can be considered as evidence for these proceedings. As such, that document will be considered.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Are the Tenants entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that:

- When the Tenants moved into the rental unit, they were subletting it from the Landlord's previous tenant;
- The Tenants were paying monthly rent of \$2,000.00;
- Rent was due by the first day of each month;
- The Landlord did not enter into a written tenancy agreement with these Tenants;
- The Landlord asked the Tenants to sign a written tenancy agreement but they did not agree to do so;
- On May 02, 2022 the Landlord personally served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated by May 13, 2022;
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the tenancy was ending because the Tenants had failed to pay utility charges of \$632.00;
- The rental unit was vacated by August 31, 2022; and
- No rent is outstanding.

The Landlord stated she does not know when the Tenants moved into the rental unit, as they were subletting the unit from her former tenant. The Tenant stated that she believes they moved into the rental unit in March of 2020.

The Tenant stated that they paid a small security deposit to the Landlord's previous tenant, which is the person who sublet the unit to them. She stated that the Tenants began paying rent of \$2,000.00 directly to the Landlord on April 01, 2020.

The Landlord agrees that at some point the Tenants began paying rent directly to her, but she does not recall when that occurred.

The Tenant stated that when they moved into the rental unit, utilities were included in the rent. She stated that in 2021 the Landlord asked them to sign a tenancy agreement which required them to pay increased rent and to pay for utilities. She stated that did not sign the agreement and they never agreed to pay for utilities.

The Landlord stated that the tenancy agreement she asked the Tenants to sign declared that the Tenants would have to pay for utilities. She stated that they refused to sign the agreement and they never agreed to pay for utilities.

### Analysis

The *Residential Tenancy Act (Act)* defines a "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

On the basis of the undisputed evidence, I find that in 2020 the Tenants sublet this rental unit from the Landlord's previous tenant.

On the basis of the testimony of the Tenant, I find that the Tenants began paying \$2,000.00 in rent directly to the Landlord. As the Landlord was not certain when the Tenants began paying their rent directly to the Landlord, I find it reasonable to rely on the testimony of the Tenant, who seemed certain of the date. Regardless of the exact date the Tenants began paying their rent directly to the Landlord, I find it reasonable to conclude they were paying it directly to the Landlord for many months.

As the Tenants were paying their rent directly to the Landlord and the Landlord accepted those rent payments, I find that the parties entered into an implied, oral tenancy agreement.

Had the Landlord not wished to enter into a tenancy agreement with the Tenants, she had the option of refusing to accept rent from the Tenants, in which case they would have remained the sub-tenant of the original tenant until such time as the original tenancy ended or their tenancy with the sub-landlord ended. The Landlord did not

exercise that option and, as such, she entered into an implied, oral tenancy agreement with the Tenants.

On the basis of the undisputed evidence, I find that the Tenants never agreed to pay for utilities as a term of their tenancy. As such, I find that the Tenants were not required to pay for utilities during their tenancy.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As there is no evidence rent was overdue when the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenants and the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was not served to the Tenants on the basis of unpaid rent, I find that the Landlord did not have the right to end the tenancy pursuant to section 46(6) of the *Act*.

Section 46(6) of the *Act* stipulates that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and 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.

As the oral tenancy agreement between the parties did not require the Tenants to pay utilities, I find that the Landlord did not have the right to end the tenancy pursuant to section 46(6) of the *Act*.

Had the Tenants wished to pursue the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I would have granted their application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. In these circumstances, the rental unit has been vacated and the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is no longer relevant.

As the Landlord did not have the right to end the tenancy on the basis of unpaid utilities, I find it was entirely reasonable for the Tenants to file this Application for Dispute Resolution in which they disputed the Ten Day Notice to End Tenancy for Unpaid Rent

or Utilities. I therefore find that the Tenants are entitled to recover the fee paid to file this Application for Dispute Resolution.

### Conclusion

The Tenants have established a monetary claim of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution and I am granting a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: September 12, 2022

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Residential Tenancy Branch