



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, CNR, OLC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on June 7, 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 October 21, 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.

### Preliminary Matter – Disclosure

The Landlord stated at the outset of the hearing that the evidence they provided to the Residential Tenancy Branch was “confidential”. They stated clearly they did not provide copies of this evidence to the Tenant in the required time.

As per the *Residential Tenancy Branch Rules of Procedure*, Rule 3.15:

The respondent (i.e., the Landlord here) must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant [i.e., the Tenant] and submitted to the Residential Tenancy Branch as soon as possible. . . . subject to Rule 3.17, the respondent’s evidence must

be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Rule 3.17 provides that an arbitrator has discretion whether to accept evidence that does not meet this standard, “provided that the evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.”

The Landlord was direct in stating they did not share the evidence with the Tenant. I find in this instance, concerning an amount for utilities alleged to be unpaid by the Tenant, disclosure of that evidence is required and necessary. It would severely prejudice the Tenant if I considered that evidence in this hearing process. For this reason, by application of Rule 3.17, I do not accept the Landlord’s evidence, and give it no consideration in this matter.

At the outset of the hearing, I informed both parties that their testimony is evidence in this legal proceeding. On that basis, I proceeded with the hearing and recorded all of the parties’ testimony on the relevant issue listed below.

#### Preliminary Matters – relevant issue

The immediate issue requiring resolution between these two parties is the 10-Day Notice issued on June 3, 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, nor their plea for the Landlord’s compliance with the legislation and/or the tenancy agreement. By Rule 2.3, I find these issues are unrelated and I amend the Tenant’s Application to exclude them. The Tenant has leave to reapply on those specific grounds.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the June 3, 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 Tenant entitled to recovery of the filing fee for this Application, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant did not provide a copy of the tenancy agreement in their evidence. The parties were aware of the basic terms therein. Aside from the rent, the Tenant was charged \$195 per month for utilities, that is sewer and garbage on top of rent. The basic rent amount is \$3,248, after a recent raise in rent.

The Landlord and Tenant each described the system for the payment of BC Hydro at the rental unit. The rental unit is above a separate, lower rental unit in the home property. The Tenant at the outset of the tenancy changed the BC Hydro account for that property to their name. An invoice that comes into the Tenant was provided to the Landlord, who would then collect 25% from the residents in the below separate unit, then forwarding that amount to the Tenant for payment. The Tenant recalled this system dropping out, and at some points they were instructed to collect that 25% from the below residents on their own, rather than the Landlord taking on that responsibility. The Tenant added that at some point they were instructed to proceed to small claims court on the Landlord's behalf to settle an account.

The tenancy started on April 1, 2021 – this is the start-of-tenancy date that appeared in the tenancy agreement, according to the parties in the hearing. The Tenant had moved into the rental unit earlier, with the Landlord's permission at the outset. As stated by the Landlord, the Tenant had access to the rental unit since March 10, 2021, and on March 25, 2021 they started moving their belongings in.

The Landlord served the 10-Day Notice to the Tenant via an established email to them on June 3, 2022. The Landlord issued this 10-Day Notice for two reasons:

- \$944 rent amount, due on June 1, 2022
- \$1,945.50 utilities owing, following a written demand on April 28, 2022

The Landlord explained the amount of \$944 was the rent amount from March 25, 2021 to April 1, 2021. This was the time the Tenant had moved into the rental unit, prior to the start of the tenancy. The Landlord stated they were asking for this rent amount from the Tenant all through 2021; however, the importance of this issue was sidelined when other issues with the Tenant became paramount.

The Tenant presented that the Landlord did not request this amount from them previously, and they could not recall any specific mention of this pro-rated amount prior to their early entry into the rental unit in March 2021. The Tenant added that this amount only arose from the Landlord after a previous dispute resolution hearing, in which the Landlord was not successful – this was a form of retaliation from the Landlord at this stage.

The Landlord presented that the listed amount for utilities was 75% of invoices they received. These were not shared with the Tenant by the Landlord to make a request for repayment of that amount from the Tenant. The Landlord described the Tenant taking on more people within the rental unit and this overall increased the usage of the utility, and thus the cost to them.

The Tenant stated they did not receive a copy of the utility bills from the Landlord. Again, this is a form of retribution from the Landlord. The Tenant did recall receiving a written demand from the Landlord for this amount on April 28, 2022.

### 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.

I find the rent amount in question was not identified to the Tenant as such prior to the tenancy starting on April 1, 2021. I find that agreement did not begin until April 1, 2021; therefore, the Tenant's obligation to pay rent when it is due did not start at any time prior to the agreement.

I accept the Tenant's submission – minus evidence to the contrary from the Landlord – that they were not aware this was an obligation to pay a rent amount under the tenancy agreement. The Landlord did not provide evidence of communication to the Tenant making that explicit, and not specifying a calculation of that amount. I find it disingenuous for the Landlord to bring an attempt for recovery of rent – in the form of an end-of-tenancy notice to the Tenant – over one year after the fact. The Landlord provided no evidence showing they had a legal agreement in place, or even tacit approval from the Tenant, that this was an actual rent amount owed by them.

I cancel the 10-Day Notice on the basis of rent amount owing, and there is no Order of Possession to the Landlord for this.

Alternatively, 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 agreement in place, the Tenant was obligated to pay a portion of the BC Hydro account in place. The onus is on the Landlord to prove the legitimacy of the 10-Day Notice, and they did not provide evidence to account for the amount of utilities listed on the 10-Day Notice. The Landlord described this being the amount of 75% of bills they received for utilities; however, that material is not in the evidence and was not disclosed to the Tenant.

Further, there is no evidence the Landlord communicated the issue, or the amount, to the Tenant on April 28, 2022 as they indicated on the 10-Day Notice. The onus is on the Landlord to demonstrate they notified the Tenant of the amount, in strict accounting terms, and made the request for payment within 30 days. There is simply no evidence of that in this hearing.

Without evidence of the Landlord's request to the Tenant, and no calculation of the amount indicated on the 10-Day Notice, I cancel the 10-Day Notice on the basis of utilities amounts owing. There is no Order of Possession to the Landlord for this.

Stated thus, I am not satisfied that when the Landlord issued the 10-Day Notice to the Tenant on June 3, 2022 the Tenant had either rent amounts or utilities owing. The 10-Day Notice is cancelled and is of no force or effect. The tenancy shall continue.

Because the Tenant was successful in this Application, I grant them reimbursement of the Application filing fee. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

### Conclusion

For the reasons outlined above, I grant the Tenant a cancellation of the 10-Day Notice, and the tenancy shall continue.

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: October 21, 2022

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Residential Tenancy Branch