



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

**TT: CNR MNDCT RR FFT**

**LI: OPU-PP MNRL-S MNDCL-S FFL**

### **Introduction**

This reconvened hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application (“Tenant’s Application”) for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated November 9, 2021 (“10 Day Notice”) pursuant to section 46;
- a monetary order for compensation from the Landlord pursuant to section 67;
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by Landlord pursuant to section 65; and
- authorization to recover the filing fee for the Tenant’s Application from the Landlord pursuant to section 72.

The Landlord made one application (“Landlord’s Application”) for:

- an Order of Possession for unpaid rent pursuant to sections 55 and 67;
- a monetary order for unpaid rent and utilities pursuant to section 38 and 67;
- compensation for monetary loss or other money owed by the Tenant pursuant to section 67;
- authorization to keep the Tenant’s security deposit under section 38;
- authorization to recover the filing fee for the Landlord’s Application from the Tenant pursuant to section 72.

The original hearing of the Application was held on March 10, 2022 (the “Original Hearing”). The Tenant, and three agents for the Landlord (“AG”, “DH” and “MM”) attended the Original Hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Original Hearing was scheduled for one hour. For the reasons stated below under the heading “Preliminary Matter- Service of Tenant’s Evidence on Landlord”, pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”), I adjourned the Original Hearing and issued a decision dated March 23, 2022 (“Interim Decision”). In the Interim Decision, I ordered the Tenant to re-serve all her evidence on the Landlord that she had submitted to the Residential Tenancy Branch (“RTB”) prior to the Original Hearing and for the Landlord to serve the Tenant with, and submit to the RTB, an updated ledger containing certain information. The Interim Decision, and Notices of Dispute Resolution Proceeding for an adjourned hearing, scheduled for October 13, 2022 at 1:30 pm (“First Adjourned Hearing”), were served on the parties by the RTB. The Tenant, RB, AG, DH and MM attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The First Adjourned Hearing was scheduled for one hour. The Tenant stated she was working and requested an adjournment of the First Adjourned Hearing. The Landlord consented to the adjournment requested by the Tenant. Pursuant to Rule 7.8 of the RoP, I adjourned the First Adjourned hearing and issued an interim decision dated October 18, 2022 (“Second Interim Decision”). The Second Interim Decision stated the Landlord and Tenant were not permitted to serve each other or file any additional evidence with the RTB. The Second Interim Decision and Notices of Dispute Resolution for the adjourned hearing, scheduled for December 12, 2022 (“Second Adjourned Hearing”) were served on the parties by the RTB. The Tenant, an agent for the Tenant (“RB”), AG, DH and MM attended the Second Adjourned Hearing and they were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The Tenant verbally appointed RB as her agent at the Second Adjourned Hearing and she left the conference part way through the Second Adjourned Hearing.

At the Original Hearing, the Tenant testified she served her Notice of Dispute Resolution Proceeding (“Tenant’s NDRP”) on the Landlord by registered mail on November 22, 2021. Although the Tenant was unable to provide the Canada Post tracking number for service on the Landlord, AG acknowledged the Landlord received the Tenant’s NDRP in late November or early December 2021. I find the Tenant’s NDRP was served on the Landlord in accordance with section 88 and 89 of the Act.

AG stated the Landlord served its Notice of Dispute Resolution Proceeding and evidence ("Landlord's NDRP Package") on the Tenant by registered mail on November 30, 2021. AG submitted into evidence a copy of the Canada Post receipt and tracking number for service of the Landlord's NDRP Package on the Tenant to corroborate her evidence. I find the Landlord served the Landlord's NDRP Package on the Tenant in accordance with sections 88 and 89 of the Act.

#### Preliminary Matter – Service of Tenant's Evidence on Landlord

At the Original Hearing, the Tenant stated that she served some of her evidence with the Tenant's NDRP, then served the Landlord with additional evidence on two subsequent occasions by registered mail and then served some further evidence on the Landlord in person. AG denied the Landlord received the last three evidence packages. Although the Tenant submitted a copy of a tracking number for service of one evidence package, the tracking number was not visible on the Canada Post receipt and the receipt was stacked on top of the tracking stub. Furthermore, the Tenant did not provide any evidence to corroborate her testimony that some evidence was served on the Landlord in person. As such, I was unable to see the receipts to verify the dates and the tracking numbers of the mailings nor was I able to tell what evidence the Tenant served on the Landlord with the Tenant's NDRP and the evidence she purported to serve subsequently in the two registered mailings and in person service on the Landlord.

Rules 3.13 and 3.14 of the RoP state:

#### **3.13 Applicant evidence provided in single package**

Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and *served on the other party in a single complete package*.

An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution] or Rule 10 [*Expedited Hearings*].

I was unable to verify the dates of service and tracking numbers for service of the Tenant's additional evidence, and as it was not clear to me what evidence the Tenant has served on the Landlord with the Notice of Dispute Resolution. Furthermore, the Tenant did not serve her evidence on the Landlord in a single complete package as required by Rule 3.13. As such, I refused to admit the Tenant's evidence for the Original

Hearing. However, I adjourned the Original Hearing and decided to hear the Tenant's claim for compensation from the Landlord at the Adjourned Hearing. In these circumstances, procedural fairness dictated that I allow the Tenant to re-reserve all of her evidence on the Landlord. Accordingly, in the First Interim Decision, I ordered the Tenant to re-serve all of her evidence, in one package, on the Landlord at least 14 days before the First Adjourned Hearing so that that her evidence would be admitted for the proceedings. In the First Interim Decision, I recommended to the parties that the Tenant submit to the RTB, at least 3 days before the First Adjourned Hearing, proof the Tenant re-reserved her evidence on the Landlord.

At the Second Adjourned Hearing, AG stated the Landlord did not receive the evidence that the Tenant was ordered to re-served on the Landlord. The Tenant did not submit any proof that she re-served her evidence on the Landlord before the First Adjourned Hearing. As such, I find on a balance of probabilities, that the Tenant did not re-reserve her evidence on the Landlord as I ordered her to do in the First Interim Decision. I told the Tenant that her refusal, or neglect, to read the First Interim Decision was at her own risk. At the Second Adjourned Hearing, RB argued that he served some of the Tenant's evidence in person on the Landlord and had pictures to prove it. However, as the Tenant failed to comply with my order to re-serve the Landlord with all of her evidence in the First Interim Order, I find it makes no difference that RB stated he served some of the Tenant's evidence on the Landlord as that evidence should have been included in the evidence that the Tenant was ordered to re-reserve on the Landlord as ordered in the First Interim Decision. As such, I find all the Tenant's evidence to be inadmissible for these proceedings.

#### Preliminary Matter – Incorrect Respondent Named as Landlord in Tenant's Application

At the Original Hearing, I noted the name of the respondent stated in the Tenant's Application did not match with the name of the landlord stated in the tenancy agreement. AG testified the Landlord's name stated in the tenancy agreement was the correct name of the Landlord. The Landlord requested I amend the Tenant's Application to remove the name used by the Tenant as the respondent and replace it with the name of the Landlord.

Rule 4.2 of the RoP states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

At the request of AG, and with the Tenant's consent, I ordered the Tenant's Application to be amended to replace the incorrect name used by the Tenant for the respondent with the correct name of the Landlord pursuant to Rule 4.2 of the RoP.

#### Preliminary Matter – Dismissal of Landlord's Claim for Order of Possession

The Landlord's Application included a claim for an Order of Possession for the rental unit. At the outset of the Original Hearing, the Tenant stated she vacated the rental unit on November 17, 2021. AG testified the Tenant did not advise the Landlord in advance that she was vacating the rental unit. AG stated the Landlord did not become aware the Tenant vacated the rental unit December 3, 2021. As the Tenant has vacated the rental unit, the Landlord's claim for an Order of Possession can no longer be adjudicated. As such, I will only consider whether the Landlord is entitled to recover the unpaid rent pursuant to the 10 Day Notice.

#### Preliminary Matter – Dismissal of Tenant's Claim

The Tenant's Application included a claim for an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord ("Tenant's Other Claim"). As noted above, the Tenant vacated the rental unit on November 17, 2021. As such, the Tenant's Other Claim can no longer be adjudicated. I order the Tenant's Other Claim to be dismissed without leave to reapply.

#### Preliminary Matter – Service of Landlord's Updated Tenancy Ledger

Prior to the Original Hearing, the Landlord submitted a tenancy ledger covering the period June 2020 to November 2021 ("Original Ledger"). As noted above, in the First Interim Decision, I ordered the Landlord serve on the Tenant, and submit to the RTB, an updated tenancy ledger ("Updated Ledger") disclosing the rent charges, credits and

rent payments for the rental unit. At the Second Adjourned Hearing, AG stated she served the Tenant with the Updated Ledger by registered mail on November 7, 2022 using the address the Tenant provided to her by text. AG provided the Canada Post tracking number to corroborate her testimony. AG stated the registered mail package was returned to her as unclaimed. At the Second Adjourned Hearing I asked the Tenant what the address was that she provided to the Landlord and it matched the address the AG stated the Tenant provided to AG by text. As such, I find the Landlord served the Updated Ledger to the correct address in accordance with the provisions of section 88 of the Act. Pursuant to section 90 of the Act, I find the Updated Ledger was deemed to have been received by the Tenant on November 12, 2022, being 5 days after it was posted by the Landlord. As such, I find the Updated Ledger is admissible for these proceedings.

#### Preliminary Matter – Severance and Dismissal of Tenants Monetary Claims

The Second Adjourned Hearing was scheduled for 60 minutes and by the end of that hearing, it became clear that I would be unable to hear the testimony and submissions of the Tenant and RB regarding the Tenant's monetary claim against the Landlord. The Original Hearing, held on March 10, 2021, was adjourned because I was unable to determine whether the Tenant had served all of her evidence on the Landlord. The First Adjourned Hearing was then adjourned because the Tenant was working and requested an adjournment and the Landlord consented to the adjournment. Many months have passed since the Landlord made the Landlord's Application to recover the rental arrears. As such, I find that it would be unfair for the Landlord to wait any further if I was to adjourn the proceedings for a third time. However, I find that procedural fairness dictates that the Tenant have the opportunity to make her claims for monetary compensation from the Landlord. Based on the foregoing, I order the Tenant's claim for monetary compensation from the Landlord to be dismissed with leave to reapply and that I make a decision on the Landlord's claims for unpaid rent and utilities based on testimony given, and evidence submitted, during these proceedings.

#### Issues to be Decided

Is the Tenant entitled to:

- cancellation of the 10 Day Notice?
- recovery of the filing fee of the Tenant's Application from the Landlord?

Is the Landlord entitled to:

- a monetary order for unpaid rent and utilities?
- retain the Tenant's security deposit?
- recover the filing fee of the Landlord's Application from the Tenant?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

AG submitted into evidence a copy of the tenancy agreement ("Tenancy Agreement") and addendum ("Addendum"), both dated May 2, 2020 (collectively the "Tenancy Agreement") between the Landlord, the Tenant and two co-tenants ("LS" and "JK")(the Tenant, LS and JK are hereinafter referred to as the "Co-Tenants") The Tenancy Agreement stated the tenancy commenced on May 15, 2020, with a fixed term ending May 14, 2021, with rent of \$4,200.00 payable on the 1<sup>st</sup> day of each month. AG stated the security deposit was paid by the Co-Tenants. Based on the foregoing, I find there was a residential tenancy between the Landlord and the Co-Tenants and that I have jurisdiction to hear the Tenant's Application and the Landlord's Application.

The Addendum stated that, as there was no lawn mower to maintain the lawn areas of the residential property. The Addendum provided several options regarding a lawnmower and the parties agreed the landlord would reduce the monthly rent payable by the Co-Tenants by \$200.00 per month for 12 months so the Co-Tenants could purchase a lawnmower. AG stated that, after the 12 months of deductions of \$200.00 ended, the Co-Tenants were to pay the full rent of \$4,200.00 per month. The Tenant stated she vacated the rental unit on November 17, 2021, AG stated the Tenant did not give written notice to advise the Landlord when she was vacating the rental unit. AG stated the Landlord did not take possession of the rental unit until December 21, 2021 when the Landlord discovered the Tenant was no longer in the rental unit.

AG submitted into evidence a copy of the 10 Day Notice and stated it was served on the Tenant by registered mail on November 9, 2021. AG submitted into evidence a signed Proof of Service certifying the 10 Day Notice was served by registered mail on November 9, 2021, together with a copy of the Canada Post receipt and tracking number to corroborate her testimony of service of the 10 Day Notice on the Tenant. I

find the 10 Day Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

The 10 Day Notice stated the Tenant had rental arrears of \$21,000.00 as of November 8, 2021 and arrears of utilities of \$2,887.62 as of November 8, 2022. AG stated that there was no lawnmower for the rental unit and, pursuant to the terms of the Addendum, the Co-Tenants were provided with a credit of \$200.00 for the rent from June through May 2021. AG submitted into evidence a monetary order worksheet on Form RTB-37 in which the Landlord claims the Tenant owes a total of \$22,200.00 for unpaid rent for the period June 2020 to November 2021, \$643.97 for unpaid Fortis gas utility charges of \$643.97 from June 2020 to November 2021 and \$826.56 for unpaid BC Hydro electrical utility charges for the period July 2020 to September 2020.

AG submitted into evidence a copy of a spreadsheet detailing charges and credits for the rental unit and stated the Tenant owed \$22,200.00 for unpaid rent that accrued from June 2020 through to November 2021. AG stated that, as the Tenant did not give written notice that she was vacating the rental unit and the Landlord did not take possession of the rental unit until December, the Landlord seeking an additional \$4,200.00 for December 2021.

AG submitted into evidence a spreadsheet disclosing the charges together with statements from Fortis and BC Hydro and stated the Co-Tenants owed a total of \$1,470.53. AG submitted copies of 15 Fortis statements covering the period May 26, 2020 to August 26, 2021 and two BC Hydro statements covering the period July 25, 2020 to September 24, 2020 to corroborate the amount of the utilities claimed by the Landlord in the foregoing table. MM stated that due to issues involving a previous tenant of the rental unit, there was a restraint put on the property by Fortis that required the owner of the property pay for the gas utility until the Tenant could become the subscriber for the gas utility. MM stated there were also issues with BC Hydro that initially required the owner to pay for the electric utilities for several months until the Tenant could become the subscriber for electricity. MM stated the Tenant agreed reimburse the Landlord for the BC Hydro and Fortis utilities paid by the Landlord. RB did not deny MM's statement regarding the Tenant accepting responsibility for payment of the utilities.

The Tenant stated that someone was going to find another tenant to share the costs but this was not done. At this point in time, the Tenant's connection to the conference was lost. RB stated that there was an agreement made with DH that one of the three Tenant's who signed the lease was going to pay rent of \$1,000.00 per month for the



upstairs' suite and the Tenant would pay the remaining rent of \$3,000.00 per month. RB stated this was the reason the \$3,000.00 was being accepted the whole time from the Tenant. RB stated that upper suite was uninhabitable because the plumbing and water did not work so the upper suite could not be sublet. RB stated that Landlord never served a notice to end tenancy for unpaid rent until the 10 Day Notice served on November 9, 2021.

AG denied there was never an arrangement with the Landlord that the Tenant would only be responsible for paying \$3,000.00 of the rental. MM stated the Landlord was unable to serve the Original Tenants with a notice to end tenancy for unpaid rent because of the restrictions that were placed on landlords from evicting tenants during the COVID pandemic. When I asked why the Updated Ledger showed net rent of \$4,000.00 from June 2020 through to November 2021, MM stated he had erred. AG stated that the Tenancy Agreement clearly stated the Co-Tenants were only entitled to a rent reduction of \$200 per month for 12 months as stated in the Original Ledger for net rent of \$4,000 from June 2020 through May 2021 and then the rent reverted to \$4,200.00 for the balance of the tenancy. MM stated the Tenant sent her numerous text messages saying she was going to make up the rent and that she was expecting a settlement from an accident she was in and that she had other things going on. MM stated that he was unaware of any problems with the upper suite except for a shower handle that would not stay on. RB denied this statement. MM stated that it was the Tenant who threw out the Co-Tenant was living in the upper suite and it was not an issue that someone could not live in the upper suite. RB did not deny this statement. AG stated the Landlord was the owner of the lawnmower for which the Co-Tenants were given total credits of \$2,400.00 for its purchase. AG stated the lawnmower could not be found at the residential property after the Tenant vacated the rental unit.

AG stated the paragraph 33 of the Tenancy Agreement provided:

The obligations upon the Tenant shall be joint and several, if there is more than one Tenant or Occupant...

AG stated that although two of the Co-Tenants vacated the rental unit, the Tenancy Agreement was never renegotiated and the Tenant remained jointly and severally liable for all the rental arrears and utility charges.

The Tenant stated she sent the Landlord numerous emails requesting repairs to the rental unit. The Tenant also stated there was old furniture on the side of the house that was supposed to have been removed before Co-Tenants moved into the rental unit.

## Analysis

### **1. Landlord's Claim for Rental Arrears**

Sections 46 and 53 of the Act state:

- 46(1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

The 10 Day Notice was served on the Tenant on November 9, 2021. Pursuant to section 90, I find the Tenant was deemed to have received the 10 Day Notice on November 14, 2021. Pursuant to section 46(4), the Tenants had until November 19, 2021, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB indicate the Tenants made their application on October 30, 2021 and, on November 18, 2022 the Tenant revised it to dispute the 10 Day Notice before the Tenant's NDRP was process and issued by the RTB. Accordingly, the Tenant's claim to dispute the 10 Day Notice in the Tenant's Application was made within the 5-day dispute period to dispute the 10 Day Notice required by section 46(4) of the Act

The Tenant stated she vacated the rental unit on November 17, 2021. AG stated the Tenant did not give the Landlord written notice that she was vacating the rental unit. AG stated the Landlord took possession of the rental unit on December 21, 2021 when the Landlord learned the Tenant had abandoned the rental unit. AG stated the Landlord was seeking the rental arrears from June 2020 through to November 2021 inclusive. The Updated Ledger indicates the Landlord gave the Co-Tenants a credit for the rent for the period May 15 to May 31, 2020 to offset the rent owing for that period on the basis of "repairs at start of tenancy".

The Tenant stated the Landlord agreed to find another co-tenant for the rental unit. RB stated the upper suite of the rental unit was uninhabitable. AG stated that the Tenancy Agreement clearly stated the Co-Tenants were only entitled to a rent reduction for 12 months as stated in the Original Ledger and denied there was any arrangement for the Tenant to be responsible for payment of \$3,000.00 per month for rent. MM stated the Tenant sent her numerous text messages saying she was going to make up the rent and that she was expecting a settlement from an accident she was in and that she had other things going on. MM stated he was unaware of any problems with the upper suite except for a shower handle that would not stay on. Neither the Tenant nor RB denied this statement. MM stated that it was the Tenant who threw out the Co-Tenant who was living in the upper suite. The Tenancy Agreement clearly stated that the Co-Tenants were jointly and severally liable for all of the obligations stipulated by the Tenancy Agreement. There is no evidence before me that corroborates the Tenant's assertions that the Landlord would find another co-tenant or that the upper suite was uninhabitable. Based on the testimony and evidence before me, I find, on a balance of probabilities, that there was no agreement that the Tenant was only responsible for payment of \$3,000.00 per month for rent. As such, I find the Tenant was responsible, as a co-tenant to the Tenancy Agreement, to all of the rental arrears claimed by the Landlord in the amount of \$22,200.00 calculated as follows:

| <b>Date</b>       | <b>Rent Owed</b> | <b>Rent Paid</b> | <b>Lawnmower Credit</b> | <b>Balance</b> |
|-------------------|------------------|------------------|-------------------------|----------------|
| June 1, 2020      | \$4,200.00       |                  | -\$200.00               | \$4,000.00     |
| June 18, 2020     |                  | -\$3,000.00      |                         | \$1,000.00     |
| July 1, 2020      | \$4,200.00       |                  | -\$200.00               | \$5,000.00     |
| July 7, 2020      |                  | -\$3,000.00      |                         | \$2,000.00     |
| August 1, 2020    | \$4,200.00       |                  |                         | \$6,000.00     |
| August 4, 2020    |                  | -\$3,000.00      | -\$200.00               | \$3,000.00     |
| September 1, 2020 | \$4,200.00       |                  | -\$200.00               | \$7,000.00     |
| September 2, 2020 |                  | -\$3,000.00      |                         | \$4,000.00     |
| October 1, 2020   | \$4,200.00       | -\$3,000.00      | -\$200.00               | \$5,000.00     |
| November 1, 2020  | \$4,200.00       |                  | -\$200.00               | \$9,000.00     |
| November 4, 2020  |                  | -\$3,000.00      |                         | \$6,000.00     |
| December 1, 2020  | \$4,200.00       |                  | -\$200.00               | \$10,000.00    |
| December 2, 2022  |                  | -\$3,000.00      |                         | \$7,000.00     |
| January 1, 2021   | \$4,200.00       |                  | -\$200.00               | \$11,000.00    |
| January 11, 2021  |                  | -\$3,000.00      |                         | \$8,000.00     |
| February 1, 2021  | \$4,200.00       |                  | -\$200.00               | \$12,000.00    |
| February 5, 2021  |                  | -\$3,000.00      |                         | \$9,000.00     |

|                   |                    |                     |                    |                    |
|-------------------|--------------------|---------------------|--------------------|--------------------|
| March 1, 2021     | \$4,200.00         |                     | -\$200.00          | \$13,000.00        |
| March 3, 2021     |                    | -\$3,000.00         |                    | \$10,000.00        |
| April 1, 2021     | \$4,200.00         |                     | -\$200.00          | \$14,000.00        |
| April 2, 2021     |                    | -\$3,000.00         |                    | \$11,000.00        |
| May 1, 2021       | \$4,200.00         |                     | -\$200.00          | \$15,000.00        |
| May 7, 2021       |                    | -\$3,000.00         |                    | \$12,200.00        |
| June 1, 2021      | \$4,200.00         |                     |                    | \$16,200.00        |
| June 9, 2021      |                    | -\$3,000.00         |                    | \$13,200.00        |
| July 1, 2021      | \$4,200.00         |                     |                    | \$17,400.00        |
| July 7, 2021      |                    | -\$3,000.00         |                    | \$14,400.00        |
| August 1, 2021    | \$4,200.00         |                     |                    | \$18,600.00        |
| August 6, 2021    |                    | -\$3,000.00         |                    | \$15,600.00        |
| September 1, 2021 | \$4,200.00         |                     |                    | \$19,800.00        |
| September 5, 2021 |                    | -\$3,000.00         |                    | \$16,800.00        |
| October 1, 2021   | \$4,200.00         | -\$250.00           |                    | \$20,750.00        |
| October 2, 2021   |                    | -\$2,750.00         |                    | \$18,000.00        |
| November 1, 2021  | \$4,200.00         |                     |                    | \$22,200.00        |
| <b>Totals:</b>    | <b>\$75,600.00</b> | <b>-\$51,000.00</b> | <b>-\$2,400.00</b> | <b>\$22,200.00</b> |

Based on the testimony and evidence submitted by the Landlord, I find the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find that it complies with the form and content requirements of section 46(2) of the Act. Based on the foregoing, I order the Tenant to pay the Landlord \$22,200.00 in satisfaction of the rental arrears pursuant to section 67 of the Act. Pursuant to section 72(2)(b) of the Act, the Landlord may deduct the security deposit of \$2,100.00 from the rental arrears owed by the Tenant, leaving a balance of \$20,100.00.

## ***2. Landlord's Claim for Utilities***

MM stated that, due to issues involving a previous tenant of the rental unit, there was a restraint put on the property by Fortis that required the owner of the property pay for the gas utility until the Tenant could become the subscriber for the gas utility. MM stated there were also issues with BC Hydro that initially required the owner to pay for the electric utilities for several months until the Tenant could become the subscriber for electricity. MM stated the Tenant agreed reimburse the Landlord for the BC Hydro and Fortis utilities paid by the Landlord. RB did not deny MM's statement regarding the Tenant accepting responsibility for payment of the utilities. Furthermore, the Tenant made payments totaling \$700.00 toward the utilities that would corroborate MM's statement the Tenant agreed to accept responsibility for payment of the utilities. Based

on the testimony and evidence before me, I find, on a balance of probabilities, the Tenant agreed to accept responsibility for payment of the gas and electrical utilities. AG stated the Landlord was claiming \$826.56 for unpaid electrical utilities and \$1,343.97 for gas utilities owing by the Tenant to the Landlord, for a total of \$1,470.53. I reviewed the Fortis and BC Hydro statements and confirmed the following charges were incurred during the tenancy for which the Tenant, as co-tenant of the Tenancy Agreement, is responsible:

| <b>Date</b>        | <b>Hydro Charge</b> | <b>Fortis Charge</b> | <b>Payment</b>   | <b>Balance</b>    |
|--------------------|---------------------|----------------------|------------------|-------------------|
| June 25, 2020      |                     | \$85.99              |                  | \$85.99           |
| July 27, 2020      |                     | \$12.65              |                  | \$98.64           |
| July 28, 2020      | \$440.13            |                      |                  | \$538.77          |
| August 27, 2020    |                     | \$51.81              |                  | \$590.58          |
| September 28, 2020 | \$386.43            | \$48.71              |                  | \$1,025.72        |
| November 25, 2020  |                     | \$60.19              |                  | \$1,085.91        |
| December 29, 2020  |                     | \$264.39             |                  | \$1,350.30        |
| January 28, 2021   |                     | \$76.18              |                  | \$1,426.48        |
| February 26, 2021  |                     | \$379.09             | -\$300.00        | \$1,505.57        |
| March 29, 2021     |                     | \$70.66              | -\$400.00        | \$1,176.23        |
| April 29, 2021     |                     | \$59.99              |                  | \$1,236.22        |
| May 31, 2021       |                     | \$36.04              |                  | \$1,272.26        |
| June 28, 2021      |                     | \$23.40              |                  | \$1,295.66        |
| July 28, 2021      |                     | \$155.45             |                  | \$1,451.11        |
| August 26, 2021    |                     | \$19.42              |                  | \$1,470.53        |
| <b>Totals:</b>     | <b>\$826.56</b>     | <b>\$1,343.97</b>    | <b>-\$700.00</b> | <b>\$1,470.53</b> |

Based on the foregoing, I order the Tenant to pay the Landlord \$1,470.53 in satisfaction of utility charges pursuant to section 67 of the Act.

### ***3. Filing Fee for Landlord's Filing Fee***

As the Landlord has been successful in the Landlord's Application, I order the Tenant to pay for the Landlord's filing fee of \$100.00 pursuant to section 72(1) of the Act

#### **4. Dismissal of Tenant's Claims**

The Tenant's claim for monetary compensation from the Landlord is dismissed with leave to reapply. As such, the Tenant has the option of making a new application for dispute resolution to make a claim for monetary compensation from the Landlord. The Tenant's claim for cancellation of the 10 Day Notice is dismissed without leave to reapply and the Tenant's Other Claim is dismissed without leave to reapply. As such, I dismiss the Tenant's Application in its entirety without leave. As the Tenant's Application has been dismissed, the Tenant is not entitled to recover the filing fee of the Tenant's Application from the Landlord.

#### **Conclusion**

I order that the Tenant pay the Landlord \$21,670.53 representing the following:

| <b>Description</b>                   | <b>Amount</b>       |
|--------------------------------------|---------------------|
| Rental Arrears                       | \$22,200.00         |
| Utilities                            | \$1,470.53          |
| Filing Fee of Landlord's Application | \$100.00            |
| Security Deposit Credit              | -\$2,100.00         |
| <b>Total</b>                         | <b>\$ 21,670.53</b> |

It is the Landlord's obligation to serve this Monetary Order on the Tenant. If the Tenant does not comply with the Monetary Order, it may be filed with 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: January 20, 2023

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Residential Tenancy Branch