



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, DRI-ARI-C, LRE, OLC, FFT

### Introduction

The Tenant seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”).

The Tenant also requests to dispute an Additional Rent Increase for Capital Expenditures, to suspend or set conditions on the Landlord's right to enter the rental unit, for the Landlord to comply with the Act, *Residential Tenancy Regulation* (the “Regulation”) or the Tenancy Agreement and the Tenant seeks to recover the cost of the filing fee for the Application under section 72 of the Act.

Both the Landlord and the Tenant attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

### Preliminary Issue: Service of Notice of Dispute Resolution Proceeding and Evidence

The Tenant stated they did not have a mailing address for the Landlord so applied to the Residential Tenancy Branch for substituted service. They requested permission to serve the Notice of Dispute Resolution Package (the “Materials”) on the Landlord via email. The request for Substituted Service was approved on January 5, 2023. The Tenant testified they served the Materials on the Landlord via email, but they were unsure of exactly when they did this.

The Tenant stated they had not served the Landlord with their evidence as they believed that by providing their evidence to the Residential Tenancy Branch, it would

automatically be made available to the Landlord. As the Landlord was not served with the Tenant's evidence, I exclude it from consideration.

The Landlord confirmed receipt of the Materials, that they had time to review the Materials and raised no issues with their service. Therefore, I find that pursuant to section 89 of the Act that Tenant's Materials were sufficiently served on the Landlord.

The Landlord confirmed they served their evidence on the Tenant on March 3, 2023 via email. The Tenant confirmed that they received the Landlord's evidence and that they had sufficient time to review it. Though parties did not reference an agreement to serve documents by email, pursuant to section 71(2)(c) I find that the Landlord's evidence was sufficiently served.

#### Preliminary Issue: Severing

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that primary issue is the Tenant's request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

#### Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Is the Landlord entitled to a monetary order for unpaid utilities?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Tenant testified that the tenancy started on December 1, 2020 and that rent is \$1,600.00 due on the first day of the month. A security deposit of \$800.00 was paid by the Tenant. A written tenancy agreement ("Tenancy Agreement") is in place. The Tenant stated there was initially themselves and another tenant occupying the rental unit, though the second tenant left the rental unit in January 2021. The Landlord agreed with the Tenant's testimony regarding the details of the Tenancy Agreement, though stated they were not aware of the second tenant leaving the rental unit.

The Landlord testified that utilities were paid in separate transactions to rent. They would email the Tenant, who resides in the upper suite of the rental property, and the tenant residing in the lower suite requesting payment for their respective portion of utilities. The Landlord stated they would attach copies of the utility bills to each email and provide a breakdown of payments due for each suite. Copies of the demand letters sent via email which show utility bills attached were provided as evidence by the Landlord.

The Landlord stated the last time they received payment for utilities from the Tenant prior to issuing the Notice was in December 2021. They had been asking the Tenant for payment for over a year and when the amount owing exceeded the amount they held for the security deposit, they opted to serve the Notice. The outstanding amount at the time the Notice was served was "one thousand and something dollars" according to the Landlord.

The Landlord testified they served the Notice to the Tenant on December 3, 2022 using four methods of service, namely via email, by attaching a copy to the door of the rental unit, via mail and by placing a copy in the Tenant's mailbox.

The Landlord stated they received payment from the Tenant for the full amount of outstanding utilities as stated on the Notice within 10 days of it being served.

The Tenant testified that they agree with the timeline of events put forward by the Landlord at the hearing. They confirmed receipt of the copies of the utility bills and stated they view the emails as demand letters for payment of utilities.

The Tenant confirmed receipt of the Notice on December 3, 2022 and after contacting the Residential Tenancy Branch for information, they paid the Landlord the amount owing for utilities in full on December 8, 2022.

The Tenant testified that around November or December 2021 they intentionally ceased paying the Landlord for utilities. Expanding on their reasoning for ceasing the payments, the Tenant stated they found the split in the percentages of utilities paid by themselves compared to the lower suite to be unfair. They acknowledged the square footage of their upper unit was marginally bigger than the lower unit, but stated the number of occupants in the lower suite made the current arrangement unreasonable in their view.

The Tenant stated the percentage split for utilities was not written in the Tenancy Agreement or the addendum, but seemed to be 60% for their upper suite and 40% for the lower suite and this was reflected by the figures contained in the demand letters.

The Landlord testified the percentage split for utilities was agreed upon at the start of the tenancy and this agreement was made verbally. They confirmed the percentages were based on square footage of the respective units. As the lower unit contains the furnace for the whole rental property, the square footage for that suite was lower than the upper unit and that was why one suite paid more than the other. They confirmed they were not aware of the additional occupants in the lower suite.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. This requirement to pay rent includes a legal requirement to pay utilities, if required under a tenancy agreement.

Section 46(6) of the Act states that “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.”

Section 46(4)(a) of the Act states that if, within 5 days of receipt, a tenant pays to the landlord the full amount owing stated on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, then the notice is cancelled.

Based on the testimonies from both parties, I find that the Tenant did pay the outstanding amount stated on the Notice within 5 days of receipt, and therefore I find that the Notice is of no force or effect and therefore the tenancy continues.

Though the Tenant's Application is successful, I do not find they are entitled to the return of the filing fee from the Landlord. The Tenant took the option available to them under the Act to render the Notice of no effect, namely by paying the outstanding amount on the Notice. Disputing the Notice was therefore not necessary, and I find it would be unfair to financially penalize the Landlord in this situation and the Tenant must bear the cost of the filling fee for the Application.

### Conclusion

The Tenant's Application is granted and the Notice is of no force or effect.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 20, 2023

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Residential Tenancy Branch