



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, CNC, OLC, FFT

### Introduction

The tenant applied on March 14, 2023 for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”);
- (ii) an order cancelling a One Month Notice to End Tenancy for Cause under section 47 of the Act;
- (iii) an order for the landlord to comply with the Act under section 62 of the Act; and
- (iv) authorization to recover the cost of the filing fee under section 72 of the Act.

### Preliminary Issue - Unrelated Claims

*Rules of Procedure* 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the tenant’s claim regarding the Notice is not sufficiently related to the tenant’s other claims to warrant that they be heard together. I exercise my discretion to dismiss the tenant’s other claims with leave to reapply and will deal only with the Notice and issues relating to the Notice.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began August 15, 2019. Rent is \$1,624.00 due on the first day of the month. The landlord currently retains a \$800.00 security deposit and a \$800.00 pet damage deposit. The tenancy is currently a month-to-month tenancy. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on March 6, 2023 by registered mail. Page two of the Notice indicates that the tenant did not pay utility charges in the amount of \$204.99.

The landlord affirmed that:

- the town of Lake Cowichan bills utility charges prospectively i.e. the residents have to pay for the entire year's utility charges in advance at the beginning of the year. This year's amount was \$819.83, which was paid by the landlord.
- the tenant's utility charges are \$68.32 per month, which is reached by dividing the yearly fee of \$819.83 by 12 months.
- the tenant was sent a copy of the utility charges from Lake Cowichan on January 30, 2023, which only contained the yearly figure of \$819.83 rather than the pro-rated monthly figure of \$68.32.
- the landlord did not provide 30 days written demand to the tenant for the pro-rated monthly figure of \$68.32.
- the tenant has not paid any utility charges since January 2023.

The tenant affirmed that:

- the tenant was not given the option to pay for the utility charges on a monthly pro-rated basis and instead was just presented with the overall bill.
- the tenant did not receive 30 days written demand from the landlord for the pro-rated monthly figure of \$68.32.

### Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day after the day rent is due.

In addition, section 46 of the Act provides that if utility charges remain unpaid for 30 days after the tenant is given a written demand for payment, the landlord may treat the unpaid utility charges as unpaid rent and may issue a *10 Day Notice to End Tenancy for Unpaid Rent*.

The landlord's evidence shows that the landlord had only provided 30 days written demand to the tenant for the yearly figure of \$819.83. However, the landlord never provided 30 days written demand to the tenant for the pro-rated monthly figure of \$68.32. As the tenancy is currently a month-to-month tenancy, it would be unreasonable to demand payment for the entire year when the tenant is not contracted to stay for the entire year. Therefore, I find that the landlord did not give 30 days written demand for utility charges in contravention of section 46 of the Act. As such, the landlord may not treat the unpaid utility charges as unpaid rent. Consequently, I am cancelling the Notice.

Since the tenant is successful in its application, the tenant's application to recover the cost of the \$100.00 filing fee under section 72 of the Act is granted. Pursuant to section 72 of the Act, the tenant is ordered to withhold \$100.00 in rent for recovery of the filing fee.

### Conclusion

The application is granted and the tenancy shall continue until it is ended in accordance with 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: May 16, 2023

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Residential Tenancy Branch