



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPU-DR, MNU-DR, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act).
The Tenant's application:

- To cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice).

And the Landlord's application for:

- An order of possession.
- A monetary order for \$4,054.84.
- Reimbursement of the filing fee.

Both parties confirm service of the Dispute Resolution Proceedings Package and related evidence.

Preliminary Issue – Amendment

At the hearing the Landlord sought to further amend their application to include a claim for increased rent which MC testified remains outstanding.

Rule of Procedure 4.2 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.

In this case, the Landlord is seeking compensation for unpaid rent that has increased since they first applied for dispute resolution, I find that the increase in the Landlord's claim should have been reasonably anticipated by the Tenant. Therefore, pursuant to Rule 4.2, I order that the Landlord's application to be amended to include a claim for the unpaid rent from January to July 2023 (\$279.86).

Issue(s) to be Decided

- Does the 10 Day Notice end the tenancy?
- Is the Landlord entitled to a Monetary Order of \$3,968.61 for unpaid rent and utilities?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

Both parties confirm the tenancy details as follows:

- The tenancy started on May 1, 2019, with a monthly rent of \$1,999.00.
- The rent is currently \$2,038.98 per month due on the first day of each month.
- On May 1, 2019 the Tenant paid a security deposit in the amount of \$999.50 and a pet damage deposit of \$999.50, which the Landlord continues to hold in trust.
- While the tenancy agreement indicates the Tenant is to pay 75% of Fortis and BC Hydro utilities, the parties have since agreed to the Tenant paying 70% of the cost of these utilities.

MC testified the Tenant failed to pay rent and utilities as per the tenancy agreement. The Landlord served the 10 Day Notice via registered mail to the Tenant on May 18, 2023, with an effective date of May 28, 2023. The 10 Day Notice is signed and dated. The 10 Day Notice indicates failure to pay rent in the amount of \$1,099.70 and utilities in the amount of \$2,855.14 due May 1, 2023. The written demand for utilities was issued via email by the Landlord on May 17, 2023. The Landlord confirmed that payments were received in the amount of \$1099.20 since September 2022.

MC further testified the Landlord served a Notice of Rent Increase on September 23, 2022, indicating rent increase of \$39.98, with the new rent of \$2038.98, payable starting on January 1, 2023. The Landlord submitted RTB#7 Notice of Rent Increase that is signed and dated by the Landlord. MC testified the Tenant did not pay rent in full as of January 2023. The total amount of unpaid rent from January to July 2023 is \$279.86 (\$39.98 per month for over 7 months).

MC testified the Tenant made rent payments since they served the 10 Day Notice but did not specify the amount of the payments. The Landlord's current claim is for unpaid rent in the amount of \$279.86 and unpaid utilities in the amount of \$3,688.75.

MC testified the Tenant previously stated they were confused about the amount of outstanding rent and utilities owed. MC stated the accounts have been reconciled and the Landlord proposed a payment plan in writing, and the Tenant engaged in email communication to confirm their commitment to pay. MC stated the Landlord follows the process of sending the Tenant bi-monthly emails regarding payment of rent, with utility bills attached.

MC stated the Landlord provided an account of money owed with a detailed payment plan, for the Tenant to make specific dollar amount payments on June 1, 15, July 1, 15, August 1 and 15, 2023. MC stated the Tenant did not make any payments in accordance with this plan.

The Landlord filed the following documentary evidence:

- Tenant Account Ledger (Ledger) showing account activity from April 2019 to July 2023.
- BC Hydro bills confirming services and billing for the rental unit ranging from April 2021 to December 2021, February 2022 to February 2023 and February 2023 to April 2023.
- Email correspondence from the Landlord to the Tenant, confirming corrections with the account, outstanding amounts, request for payment and the Tenant's acknowledgement to pay.

The Tenant stated the Landlord's Ledger is difficult to read and understand, with respect to payment of rent and utilities. The Tenant stated they sought assistance from their social assistance worker, who confirmed concerns and discrepancy with the outstanding amount. The Tenant did not provide details with respect to the discrepancies. The Tenant stated they have paid all outstanding rent and admit they are yet to pay the outstanding utilities. The Tenant provided a copy of their chequing account showing three transactions in the amount of \$1,099.20 from March to May 2023, and one transaction of \$1,824.18 for June 2023. This statement does not show who the recipient of the payments. All of these payments are recorded in the Ledger.

The Tenant stated they rely on their employment income and at times they are not paid on time. The Tenant stated despite this difficulty, they have paid rent in full and are committed to paying utilities as long as the Landlord clearly establishes the outstanding amount.

Analysis

- Does the 10 Day Notice end the tenancy?

Section 46 (6) of the Act states the landlord may treat unpaid utility charges as unpaid rent and give notice under this section if the 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 gave a written demand letter for payment of utilities on May 17, 2023, and the 10 Day Notice is dated May 18, 2023. The Tenant was not given 30 days to make payment from the time they received the written demand for utilities. Instead, the 10 Day Notice was issued within one day from the time the Tenant was given a written demand for unpaid utilities. I find the 10 Day Notice was prematurely issued for non-payment of utilities.

The 10 Day Notice indicates failure to pay rent in the amount of \$1,099.70. However, the Tenant Ledger indicates that the Tenant paid this amount on May 1, 2023. As such, I find the 10 Day Notice is invalid as it was issued incorrectly for unpaid rent. The 10 Day Notice is cancelled and of no force or effect.

- Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Although the Tenant paid the amount listed on the 10 Day Notice (\$1,099.70), this does not mean that she is not in rental arrears. The Tenant Ledger indicates the original amount of monthly rent was paid from January to July 2023. However, the Tenant's monthly rent was increased to \$2,038.98 effective January 1, 2023, by way of a rent increase served on September 23, 2022. As such, the Tenant was underpaying their monthly rent by \$39.98 since the rent increase was applied in January 2023. Accordingly, based on the evidence before me, I find the Tenant failed to pay rent in the amount of \$279.86 from January to July 2023 and I award this amount to the Landlord.

The Landlord indicates unpaid utilities in the amount of \$3,688.75. The Ledger indicates the total amount of \$4,995.62 for utilities owed up to July 7, 2023. The Ledger does

indicate payment of utilities made by the Tenant, however, all of the payments are not clearly identified as utility payments or otherwise. I find there is a discrepancy, which does not clearly account for the outstanding amount of utilities. The Ledger commingles NSF fees, BC Hydro charges, and ministry and direct pre-authorized payments from the Tenant. As such, I am unable to determine the precise amount of unpaid utilities. The Landlord has therefore failed to discharge its evidentiary burden to prove it is more likely than not that the Tenant owes the Landlord the amount of utilities claimed.

Based on the evidence presented, I accept that the Tenant failed to pay all of the utilities bills she was required to under the Tenancy Agreement. However, I cannot say the exact amount she has failed to pay. It is the Landlord's responsibility to establish this amount. As they have failed to do so, I cannot grant the monetary order sought.

In the circumstances, I find it appropriate to dismiss this part of the Landlord's application with leave to reapply.

- Is the Landlord entitled to recover the filing fee?

As the Landlord was partially successful with their application, I find the Landlord is entitled to recover \$50.00 of the filing fee as per Section 72 of the Act.

Conclusion

The 10-Day Notice of May 18, 2023 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Landlord is granted a monetary award of \$329.86 as follows:

Total Unpaid Rent	\$279.86
Filing Fee	\$50.00
Total Monetary Award	\$329.86

I order the Landlord to retain \$329.86 of the security deposit in full satisfaction of the above noted amount.

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: August 18, 2023

Residential Tenancy Branch