



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes**

Landlord: OPR, MNR, MNDC, FF, O  
Tenant: CNR, FF

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications filed by the landlord and the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for loss or damage under the Act, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of this application.

The parties both attended, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The tenant also called a witness, who gave affirmed testimony and was subject to cross examination by the landlord. All information and evidence has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to an order cancelling a notice to end tenancy?

### **Background and Evidence**

This fixed-term tenancy began on June 1, 2009, which was renewed from time to time and ultimately has an expiry date of October 31, 2010. The tenant still resides in the rental unit. Rent in the amount of \$1,080.00 is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. The landlord also collected a security deposit from the tenant in May, 2009 in the amount of \$500.00.

A number of tenancy agreements were prepared, the latest being signed on August 31, 2010. That agreement specifies that gas and electricity are included in the rent. The two prior tenancy agreements state that electricity and heat are not included in the rent, and one of those tenancy agreements states that the tenant pays 40% of those utilities. The landlord testified that she copied the gas bills and provided a copy to the tenants. BC Hydro was payable every other month, and the tenants paid half of the bill each month. Therefore, the bill provided in March was for the January and February usage and the tenant would pay half of it in March and the other half in April. Further, the BC Hydro bill in July was a large hydro bill. The landlord had to use more electricity to rid the units of bedbugs and she did not feel it was the responsibility of the tenants. The rental unit is heated with natural gas.

The landlord further testified that on August 5, 2010 she requested payment of \$360.96 from the tenant for unpaid utilities, and agreed that the tenant could make instalments toward that amount, however received no payments in the 6 weeks that followed. She further testified that the tenant had indicated there were problems with the calculations and then the landlord realized that the payment amount should have been \$380.75. The landlord made further requests for payment on September 1, September 12 and again on September 15, 2010.

On September 15, 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided by the tenant in advance of the hearing. It states that the tenant failed to pay utilities in the amount of \$360.96 following written

demand on August 6, 2010. The notice has an effective vacancy date of August 25, 2010, which is prior to its issuance.

The tenant testified that the landlord delivered the hand-written calculation for utilities to her on August 31, 2010, not on August 5, 2010. Further, she asked the landlord on September 12, 2010 for copies of the bills, and on September 15, 2010 the landlord delivered copies and served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. She further testified that the only request for utility payments for 6 months of the tenancy was given on September 15, 2010, and if the bills had been provided in a timely manner, it would have allowed her enough time to confirm calculations and pay the bills prior to their due dates. Allowing the bills to accumulate over 6 months and then demand payment was unreasonable. The tenant started paying utilities by paying an increase in rent on September 1, 2010, which is why the latest tenancy agreement was prepared.

The tenant further testified that according to her calculations, the amount of \$360.96 is due to the landlord, not \$380.75. When asked what she hopes to accomplish by applying for dispute resolution, the tenant responded that she wished a payment plan.

### **Analysis**

Firstly, dealing with the “30 day rule” respecting utilities, the *Residential Tenancy Act* states:

**46 (6) 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.

I also find that the landlord served a notice with an effective date of vacancy which is prior to the date the notice was issued. Although Section 53 of the *Act* states that incorrect dates on a notice to end the tenancy are corrected to be the soonest date that the *Act* provides for, I find there is conflicting evidence with respect to when the landlord delivered the request for payment. I also find that the tenant was within her right to request copies of the bills, and the landlord did not deliver those until September 12, 2010. For those reasons, I find that the 30 day rule is in question, and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities should be cancelled.

With respect to the amount of utilities owing, I find that the landlord has established that the tenant owes \$360.96. The landlord testified that she made an error on the notice to end the tenancy and the handwritten calculations, but did not provide any evidence of notifying the tenant of the error. The evidence before me is that the tenant was requested to pay \$360.96. I have no authority under the *Act* to order that the tenant be permitted to make partial payments towards that debt.

### **Conclusion**

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

The landlord's application for a monetary order is hereby allowed at \$360.96 for unpaid utilities and I grant the landlord a monetary order for that amount. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenant's application for an order cancelling the notice to end tenancy is hereby allowed and the notice to end the tenancy is hereby cancelled.

Since both parties have been partially successful with their applications, I decline to order that either party recover the filing fee for the cost of this application.

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: November 02, 2010.

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Dispute Resolution Officer