



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LANDLORD: OPR, MNR  
TENANTS: CNR, CNL MT. FF

### Introduction

The Landlord said she served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on August 28, 2017 for the original application and on September 13, 2017 for the amended application. Based on the Landlord’s evidence I find that the Tenants were served with the Landlord’s hearing packages as required by s. 89 of the Act.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on August 30, 2017 with the original application and on October 24, 2017 with the amended application. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing packages as required by s. 89 of the Act.

Both parties confirmed receiving the others hearing package, the amended applications and the evidence packages. The Hearing was convened with all parties in attendance.

### Issue(s) to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent or utilities and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent or utilities and if so how much?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notices to End Tenancy?
2. Do the Tenants need more time to make the application?

It should be noted the Tenants’ application met the time requirement for their applications so no additional time is required. .

### Background and Evidence

This tenancy started on November 1, 2016 as a 2 year fixed term tenancy with an expiry date of October 31, 2018. The tenancy agreement says rent is \$1,000.00 up to October 31, 2017 and then is reduced to \$900.00 after October 31, 2017. The Tenant paid a security deposit of \$500.00 at the start of the tenancy. No condition inspection report was completed at the start of the tenancy. .

The Landlord said that the Tenant have unpaid rent in the amount of \$50.00 for October, 2017 and unpaid utilities in the amount of \$869.68 covering a number of months. The Landlord said she gave the Tenants a copy and submitted a monetary worksheet of the unpaid utilities. The Landlord also submitted copies of the unpaid electrical/utility invoices for the rental unit. As a result of the unpaid rent and utilities the Landlord gave the Tenant a 10 Day Notice to End Tenancy for unpaid rent and utilities dated August 18, 2017 by personal delivery on August 18, 2017. Further the Landlord said she also issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property on the same day. The reason on the 2 Month Notice to End Tenancy for Landlord's Use of the Property is for the landlord or close family member to use the property. The effective vacancy date on the 2 Month Notice to End Tenancy for Landlord's Use of the Property is December 31, 2017. The Landlord said if her application is successful she is requesting an Order of Possession for December 31, 2017 and a monetary order for the unpaid rent and utilities in a total amount of \$919.68.

The Tenants said they were under the understanding that the extra \$100.00 per month on the \$1,000.00 rent payment was to cover the utilities. The male Tenant said this was a verbal agreement and they have nothing in writing to support it. The male Tenant said they do not believe they have any unpaid utilities. Further the Tenants said they pay  $\frac{1}{2}$  the rent on the 27<sup>th</sup> of each month and half on the 13<sup>th</sup> of each month, so they are prepaid for a few days each month. The Tenants said they do not have any rent arrears. The female Tenant said they want to continue the tenancy and they would pay the unpaid utilities if they have to.

The Landlord said the tenancy agreement says the rent payment does not include electricity or heat. Further the Landlord said the rent reduction from \$1,000.00 to \$900.00 was compensation to the Tenants for signing a 2 year fixed term tenancy. The Landlord said she wanted a long term tenancy and if the Tenants were good she would reduce the rent by \$100.00 per month in the second year of the tenancy. The Landlord said the \$100.00 rent reduction had nothing to do with utilities and there was no agreement on utilities except the Tenants were to pay them. The Landlord said she understood that the \$50.00 of unpaid rent on the 10 Day Notice to End Tenancy may be in error as the rent is paid in advance on the 27<sup>th</sup> of each month. The Landlord continued to say the utilities have not been paid. The Landlord said the Tenants are responsible for the utilities and they made a payment of \$100.00 in July, 2017 but there

is still \$869.68 outstanding. The Landlord said she wants to end the tenancy and get the utilities paid.

The Tenants said in closing they would like to continue the tenancy and will pay the utility bills because it is very difficult to find another rental in their area. The female Tenant said she understands that they used the power and they will pay for what they used, but this was a very bad situation as the Tenants misunderstood the rent payment agreement with the Landlord.

The Landlord said in closing that she told the Tenants many time and issued a number of Notice to End Tenancy for unpaid utilities. The Landlord said the Tenants told her they could not afford the utilities so they did not pay them.

### Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further unpaid utilities are considered unpaid rent if the Landlord issues a formal request to pay the utilities and the utilities are unpaid 30 days after the request to pay. I accept the Landlord's testimony and evidence that she has issued formal requests for the utility bill payments in the form of Notices to End Tenancy, copies of the bills and a monetary order work sheet given to the Tenant. I accept that there is \$869.68 in unpaid utilities that can be treated as unpaid rent. .

Further I find that the because the Tenants have not paid the unpaid utilities the Tenants have not established grounds to cancel the 10 Day Notice to End Tenancy for unpaid rent or utilities.. Consequently, I dismiss the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid rent or utilities.

I accept the Landlord's testimony and evidence that there are unpaid utilities in the total amount of \$869.68. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$869.68.

Further, I find that because the Tenants have not paid the overdue utilities and they have not been successful in cancelling the 10 Day Notice to End Tenancy for Unpaid rent or utilities; pursuant to section 55 (2) (b) of the Act the Landlord is entitled to an Order of Possession to take effect December 31, 2017.

As the tenancy is ending based on the 10 Day Notice to End Tenancy for unpaid rent or utilities, I dismiss the Tenants request to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property as it is immaterial now.

### Conclusion

An Order of Possession effective on December 31, 2017 and a Monetary Order in the amount of \$869.68 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application to cancel the Notices to End Tenancy is dismissed without leave to reapply.

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 15, 2017

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Residential Tenancy Branch