



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0821149 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, FFT, O, FFL, MNRL, OPU

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession on the basis of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) for unpaid utilities pursuant to section 55;
- a monetary order for unpaid utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant's original application of June 4, 2019 sought:

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

The tenant's amended application of June 28, 2019 sought a monetary award for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

### Preliminary Issues

As the tenant confirmed that they were handed the 10 Day Notice by the landlord on June 13, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the landlord's dispute resolution hearing package and written evidence, I find that the tenant was duly served with this material in accordance with sections 88 and 89 of the *Act*. As the landlord confirmed receipt of the tenant's original dispute resolution hearing package, which the tenant's representative (DP) said they sent to the landlord by registered mail on June 5, 2019, I find that the landlord was duly served with this package and the written evidence pertaining to the tenant's original application in accordance with sections 88 and 89 of the *Act*.

The tenant's representative DP testified that they sent the landlord a copy of the amended application seeking a monetary award of \$909.00 by registered mail on July 2, 2019. They provided the Canada Post Tracking Number and gave undisputed sworn testimony that this package and the evidence pertaining to the tenant's amended application has not been picked up by the landlord. The landlord testified that they knew nothing about the tenant's amended application and had not received written evidence about that amendment from the tenant. Until this hearing, the landlord was unaware that the tenant was seeking a monetary award.

The Residential Tenancy Branch's (RTB's) Rules of Procedure establish that Applicants for dispute resolution are to provide Respondents with a copy of their written evidence as soon as possible, and by at least 14 days prior to the scheduled hearing. In this case, I find that the tenant's amended application and written evidence pertaining to that amended application was deemed served to the landlord on July 7, 2019, eight days before this hearing, in accordance with sections 89 and 90 of the *Act*. Since the tenant did not serve this material to the landlord at least 14 days before this hearing, the landlord did not have adequate notice of this amendment to the tenant's original application, nor did the landlord have an adequate opportunity to provide their response to this additional issue and the tenant's request for compensation. Under these circumstances and as some of the items identified in the tenant's application resulted from events that transpired after the tenant submitted the original application and received the 10 Day Notice from the landlord, I dismiss the tenant's amended application with leave to reapply.

In so doing, I advised the tenant and their representatives that the only monetary compensation available to an Application for dispute resolution relating to a hearing is

the recovery of the filing fee. I also noted that as the tenant did not dispute the 10 Day Notice and chose to vacate the rental unit by June 23, 2019, the date identified by the landlord in the 10 Day Notice, the tenant would not be entitled to compensation for rent paid at a new rental suite for the remainder of June 2019.

At the commencement of the hearing, the parties agreed that the tenant vacated the rental unit on June 23, 2019. As such, the tenant withdrew their application for emergency repairs and the landlord withdrew their application for an Order of Possession based on the 10 Day Notice. Both of these portions of the parties' applications are hereby withdrawn.

The landlord testified that they had applied for a monetary award for damage arising out of this tenancy and to keep the tenant's security deposit. The landlord gave undisputed sworn testimony that a hearing of their application is scheduled for October 13, 2019 (see above).

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities? Should any other orders be issued with respect to this tenancy? Are either of the parties entitled to recover their filing fees for their applications?

#### Background and Evidence

On May 21, 2016 the landlord signed the Residential Tenancy Agreement (the Agreement). On June 9, 2016, the tenant signed the Agreement. According to the terms of their Agreement, the tenancy for one rental unit in this three storey, 27 rental unit rental building was to run from June 9, 2016 until July 31, 2016. At the expiration of the initial term, this tenancy converted to a month-to-month tenancy. Monthly rent was set at \$500.00, payable in advance on the first of each month, plus utilities except for gas. The landlord continues to retain the tenant's \$250.00 security deposit and a \$100.00 key deposit charged when this tenancy began.

The landlord's 10 Day Notice identified \$541.16 in utilities as owing, and that a demand for payment of this amount had been provided to the tenant on May 6, 2019. The landlord maintained that this amount was for the provision of water and sewer utilities by the municipality. The landlord referred to Section 5 of the Agreement, in which the tenant agreed "to pay all utilities and/or services based upon occupancy of the premises except natural gas for the hot water." A copy of the May 6, 2019 demand letter was

included with the landlord's written evidence, as were copies of a March 15, 2018 letter seeking the recovery of water and sewer utilities for 2018, and additional letters April 17, 2019, May 8, 2019, June 1, 2019, June 12, 2019 and June 18, 2019.

The tenant and her representatives maintained that the tenant had never received any forewarning that the tenant would be held responsible for these municipal water and sewer charges until April 2019. The tenant denied having received the March 15, 2018 letter. The landlord said that they posted copies of the March 15, 2018 letter on a notice board in a common area of this rental building, and upon the advice of representatives of the RTB, also posted this notice on the tenant's door in March 2018. The landlord did not provide any witness attesting to the provision of this notice on the tenant's door in March 2018.

The March 15, 2018 letter is a general letter, not addressed to the Tenant. That letter stated that water and sewer costs for 2018 had increased to more than \$500.00. The letter advised that there was the option to pay an additional \$50.00 per month instead of a lump sum payment to the landlord.

The landlord's April 17, 2019 letter noted that the water and sewer costs were now due for an amount of \$541.16. It also provided a detailed breakdown of how this figure was established. As was the case with the March 2018 letter, the option of paying for this service by way of a \$50.00 monthly payment to be included with the tenant's rent was included in the April 2019 letter. Once more, this letter was not addressed to the tenant, but appears to have been a general notice provided to all tenants within this building.

The May 6, 2019 letter provided essentially the same information regarding the water and sewer charges and requested payment by the recipient of that letter.

The landlord's June 1, 2019 letter was the first of these letters specifically addressed to the Tenant and stated that the Tenant agreed to pay all utilities except for natural gas in Clause 5 of the Agreement. The letter further stated that the amount of \$541.16 was now due and that this was the third letter of this type sent to the tenant. The June 12, 2019 letter, again addressed to the tenant, advised that unless the water and sewer charge were paid in full by June 14, 2019, the landlord would be issuing a 10 Day Notice for Unpaid Utilities.

The tenant and their representatives said that the first time that they received a detailed breakdown of the basis for the landlord's water and sewer charges was as part of the landlord's written evidence. This evidence took the form of a March 27, 2019 Annual Utilities Invoice for this entire property, also entered into written evidence by the

landlord. This invoice shows that the water and sewer charges for this building are due by December 31, 2019.

Tenant Representative DP said that they had approached the CAO of the municipality, who advised them that the municipal letterhead on the document provided by the landlord appeared irregular and that this bill did not appear to be from the municipality. DP alleged that the invoice submitted by the landlord did not break the water and sewer costs down with sufficient detail to determine if these were genuine costs that the landlord should be able to charge to the tenant. DP said that the landlord had only chosen to try to recover these water and sewer charges in 2019, almost three years after this tenancy began. DP also maintained that these were not water and sewer utility charges, but a municipal tax.

The landlord said that they were not involved in the process of collecting rents and charges in previous years, but as of March 2018, the landlord was collecting water and sewer charges from most tenants. The landlord said that the breakdown of the municipal water and sewer charges was arrived at by totalling the charges identified on the 2019 municipal bill for these items and dividing that amount by the 27 rental units in this building.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant has contravened the *Act*, the *Regulations* or, as in this case, the terms of their Agreement.

I wish to emphasize that the issue before me is not whether the landlord had provided sufficient notice of the unpaid utilities to warrant ending this tenancy on the basis of the 10 Day Notice. The tenant did not dispute that Notice and vacated the rental unit by June 23, 2019, the date identified on that Notice. The issues before me, instead, are:

- whether or not the Agreement required the tenant to pay their portion of the landlord's water and sewer charges levied by the municipality;

- whether these charges constituted utilities as set out in Clause 5 of the Agreement;
- if so, whether these charges were calculated correctly;
- whether the landlord is entitled to a monetary award, and if so, in what amount.

Although I have given the testimony of Tenant Representative DP careful consideration, I see little validity in their claim that the water and sewer charges are municipal taxes and not utilities. If the invoice submitted by the landlord is a genuine copy of the municipal invoice provided by the municipality, a matter questioned by Tenant Representative DP at this hearing, the invoice clearly states that it is an "Annual Utilities Invoice." Tenant Representative DP provided no substantive evidence that this was an altered invoice and not issued on proper municipal letterhead. Since this invoice is described as an Annual Utilities Invoice, I find that the charges which the landlord has claimed constitute "utilities" as defined by Clause 5 of their Agreement.

The tenant's representatives asserted that the landlord's failure to collect on utility charges prior to 2019 barred the landlord from doing so in 2019. Had this tenancy been in existence for many years, there may be an argument that the landlord's failure to act on this matter and try to collect utility charges barred them from initiating this process in 2018 or 2019. I do not find that there is sufficient evidence before me to determine with certainty that the first attempt that the landlord made to recover water and sewer charges from tenants in this rental building was in 2019. The landlord said that they were not familiar with what had transpired prior to 2018, but that as of that year, the landlord was attempting to recover water and sewer charges from tenants as per the terms of their Agreements. The terms of the Agreements with the other tenants in this building were not presented as written evidence, nor was the record of other tenants' payment of water and sewer charges for 2018. I can only consider what has happened with respect to this tenancy. While the landlord may very well be barred from collecting water and sewer charges for 2016, 2017 or 2018 from the tenant, there is a municipal bill for water and sewer provided by the landlord in support of their claim for a monetary award for water and sewer utility charges for 2019.

If this tenancy were still continuing, an argument could certainly be made that the due date for the landlord's water and sewer charges has not yet arisen, and as such, the landlord's payment of water and sewer charges for the tenant's portion of the building has not yet become due. In this regard, the landlord has not provided evidence that the water and sewer charges for this building have been paid to the municipality. However, as this tenancy has ended and the amount of the tenant's portion of the overall water and sewer charges can now be calculated, I find that there is no reason to wait until the

end of this year to assign the amount of the landlord's eligibility for a monetary award for unpaid water and sewer utility charges arising from this tenancy.

I find that the landlord's calculation of the \$541.16 claimed is an equal distribution of water and sewer utility charges to each of the 27 rental units in this rental building. However, as this tenancy ended on June 23, 2019, the landlord is only eligible for a monetary award for water and sewer utility charges for the first six months of this year, ending on June 30, 2019. This reduces the landlord's eligibility for a monetary award by one-half to \$270.58 ( $\$541.16 \times 50\% = \$270.58$ ).

As the landlord has been partially successful in this application, I allow the landlord to recover their \$100.00 filing fee from the tenant.

Although the landlord's current application does not seek to retain the tenant's security and key deposits, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security and key deposits plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. In taking this action, I note that utilities that have not been paid within 30 days become unpaid rent for the purposes of the interpretation of the *Act*.

I dismiss that portion of the tenant's application that has not been withdrawn.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid water and sewage utility charges plus the filing fee for their application, and to retain the tenant's security and key deposits in partial payment of that award:

Item	Amount
Unpaid Utilities	\$270.58
Less Security and Key Deposits	-350.00
Recovery of Filing Fee for Landlord's Application	100.00
<b>Total Monetary Order</b>	<b>\$20.58</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession and the tenant's application for emergency repairs are withdrawn.

The tenant's amended application for a monetary award is dismissed with leave to reapply. The remainder of the tenant's application 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: July 15, 2019

---

Residential Tenancy Branch