



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities; an order cancelling a One Month Notice to End Tenancy For Cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing, and the landlord's agent was accompanied by an assistant who observed only and did not take part in the hearing. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord's agent agreed that the One Month Notice to End Tenancy For Cause be cancelled, and I so order.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, specifically with respect to utility bills?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on October 1, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$1,300.00 was payable on the 1<sup>st</sup> day of each month, which was increased to \$1,326.00 per month effective in July, 2023, and there are no rental arrears. On September 22, 2020 the landlord collected a security deposit from the tenant in the amount of \$650.00, and on October 18, 2023 the landlord collected a pet damage deposit from the tenant in the amount of \$650.00, both of which are still held in trust by the landlord. The rental unit is a basement suite and the landlord resides in the upper level of the home. A copy of the tenancy agreement has been provided by the tenant for this hearing.

The landlord's agent further testified that on September 15, 2023 the tenant was served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) by posting it to the door of the rental unit. A copy of the Notice has been provided by the tenant for this hearing and it is dated September 15, 2023 and contains an effective date of vacancy of October 16, 2023. The reason for issuing it states that the tenant failed to pay utilities in the amount of \$257.00 following written demand on August 2 to September 11. The landlord's agent testified that a written demand was made on August 2, 2023 by email giving the tenant until September 15, 2023 to pay the pet damage deposit and 2 utility bills. A copy of the written demand has not been provided for this hearing.

The landlord's agent did not send copies of the bills to the tenant, but testified that the gas bill was \$153.62 for March to April, 2023 and \$48.83 for April to May, 2023. The hydro bill was \$418.58 for 2 months from March 11 to May 9, 2023. The tenant is responsible for 25% of those bills. Initially, the tenant didn't pay utilities, until the landlord went away in January, 2023 and the utilities were still increasing. The tenant paid the first bills that were sent to her, about \$193.00, but stopped paying.

The tenancy agreement shows that gas, heat and hydro are not included in the rent, and the Addendum states: "5) If the utilities increase excessively due to the Tenant, the Tenant will be required to pay for ¼ of the monthly gas and electric bills." The landlord, who resides in the upper level of the home was away and not using the utilities from December 29, 2022 to January 27, 2023. The landlord has provided a chart from the hydro company setting out consumption from December 29, 2022 to January 27, 2023. The landlord's agent testified that the base amount of consumption in kWh is January 6, 2023, being the lowest point of consumption while the landlord was away. Prior to 2023 there was no request for the tenant to pay any utilities.

The tenant has provided a copy of a gas bill in the amount of \$396.21 for December 28, 2022 to January 24, 2023 and a hydro bill in the amount of \$272.61 from November 11, 2020 to January 12, 2021. The landlord's agent testified that the tenant was given those bills in February, 2023 when the landlord first requested that the tenant start paying utilities, and the tenant paid 25% of those bills on April 19, 2023.

**The tenant** testified that the landlord's agent uses different methods of communication; in person and by email. The Notice to end the tenancy was posted to the door, and the landlord sent the tenant an email, but does not keep up on what method the landlord wishes to use. How the tenant gets the bills gets lost in translation.

The tenant also testified that the tenant works all the time, 2 jobs and is not home. To incur all those utilities is incorrect. The bills are based on increased electricity rates, not only by the tenant. Referring to the hydro bills provided by the tenant, from November 11, 2020 to January 12, 2021 the electricity usage over time increased by 23% compared to the same period the year before. It also states that from November, 2021 to January 12, 2022 the electricity usage increased 51% compared to the same period the year before. The 3<sup>rd</sup> bill shows that from November 11, 2022 to January 11, 2023 the electricity usage over time decreased by 3%.

The tenant also testified that at the time when the tenant moved in, the landlord did not have an electric car, but purchased it after the tenant moved in, which the landlord charges from home.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Act*.

In this case, I have reviewed the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*.

The *Act* also states that the landlord may treat unpaid utilities as unpaid rent 30 days after the tenant is given a written demand for the payment of the utilities. The landlord's agent testified that the tenant was given a written demand for the payment of utilities, but a copy has not been provided for this hearing.

I have also reviewed the hydro consumption chart provided by the landlord for this hearing. The landlord's agent testified that the landlord was away from December 29, 2022 to

January 27, 2023, which would indicate that most, if not all of the hydro was consumed by the tenant. However, the chart fluctuates a lot from day to day. According to the chart, the highest point of consumption was December 29, 2022, the same day the landlord went away, and the lowest was on January 6, 2023. The landlord uses that amount as the base amount, but there is no evidence to suggest that anything above that amount is “excessive.”

I accept the undisputed testimony of the tenant that the landlord purchased an electric vehicle after the tenant moved in. I fail to see how the consumption could be so high on the same day that the landlord went away.

I find that the tenancy agreement is not clear, indicating that if the consumption is excessive due to the tenant, the tenant will be required to pay 25%. There is no indication of what is deemed to be “excessive.” I am not satisfied that the landlord has established that the fluctuation in consumption is caused by the tenant, given that the landlord charges his electric vehicle at the rental unit.

The only evidence provided by the landlord is the hydro chart. Since the landlord has not provided a copy of a written demand to pay utilities, and the landlord has purchased an electric vehicle, I am not satisfied that the landlord has established that the tenant has failed to pay utilities within 30 days after the tenant received a written demand for that payment, or that the landlord has established that the excessive use was caused by the tenant. Therefore, I cancel the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities and the tenancy continues until it has ended in accordance with the law.

The tenant has also applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and the record shows that the landlord is not complying with the contract, but does not indicate how the landlord is not complying, and the tenant did not elaborate during the tenant’s testimony. Therefore, I dismiss that portion of the tenant’s application.

Since the tenant has been partially successful with the application, the tenant is entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the order to the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated September 15, 2023 is hereby cancelled, by consent.

The 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated September 15, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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: October 31, 2023

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Residential Tenancy Branch