



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** MND MNDC FF

## Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord stated that he did not receive copies of the evidence that the Tenant submitted to the Residential Tenancy Branch (RTB). The Tenant stated that he posted copies of that evidence to the front door of the Landlord's residence. I find that the only relevant evidence that was submitted by the Tenant was a letter submitted to the RTB, and that most of the information in that letter was presented verbally by the Tenant at the hearing. I find that I can make my decision without relying on the evidence that was presented by the Tenant prior to this hearing.

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

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid utilities; a monetary Order for damage to the rental unit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

### **Background and Evidence**

The Landlord stated that this tenancy began on November 01, 2007 and the Tenant stated that it began on November 03, 2007. The Landlord stated that the Tenants vacated the rental unit on December 17, 2008 and the Tenant stated that they vacated it on December 15, 2008. The parties agree that they Tenants were required to vacate the rental unit on December 31, 2008. The parties agree that they had a tenancy agreement that required the Tenant to pay monthly rent of \$900.00 plus 50% of the utilities.

The Landlord and the Tenant do not agree on the circumstances surrounding the completion of a condition inspection report at the start and at the end of the tenancy. I do not find this information to be particularly relevant in determining this matter, as the parties both agree that the Tenants did not sign a condition inspection report at the end of the tenancy. As the Tenants did not sign the condition inspection report at the end of the tenancy, I find that the report holds no greater evidentiary value than the Landlord's verbal testimony regarding the condition of the rental unit at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$107.39 for unpaid utilities from November of 2007. The Landlord submitted a gas bill from November, 50% of which is \$78.28. The Landlord submitted a hydro bill from October and November, in

the amount of \$116.38. As the hydro bill is for two months, one of which the Tenant did not occupy the rental unit, the Landlord is only claiming 25% of this bill, which is \$29.09. The bills establish that the Tenant owed \$107.37 in utilities from November.

The Landlord is seeking compensation, in the amount of \$133.84 for unpaid utilities from December of 2007. The Landlord submitted a gas bill from December, 50% of which is \$103.00. The Landlord submitted a hydro bill from November and December, in the amount of \$123.35. As the hydro bill is for two months, one of which the Tenant did not occupy the rental unit, the Landlord is only claiming 25% of this bill, which is \$30.83. The bills establish that the Tenant owed \$133.83 in utilities from December.

The Tenant stated that the hydro and gas bills were not paid because there was no thermostat and the Landlord did not comply with requests to have the gas fireplace lit. The Landlord agreed that he did receive a request from the Tenants to light the pilot light on the fireplace. He stated that he attempted to arrange a time to meet with the Tenant's to light the pilot light but they did not respond to his messages regarding this issue. He stated that the Tenants also used gas for heating and for hot water.

The Landlord is claiming compensation, in the amount of \$41.63 for renting a carpet cleaner and three hours of his personal time, at a rate of \$20.00 per hour, for cleaning the carpets. The Landlord submitted a receipt from Safeway for the rental of a carpet cleaner. The Landlord stated that the carpet was dirty and stained at the end of the tenancy. He submitted a photocopy of a picture showing the stain on the carpet, however the photograph is too dark to be of evidentiary value. The Tenant stated that the carpet was vacuumed at the end of the tenancy but he agrees that it was not steam cleaned.

The Landlord is claiming compensation, in the amount of \$110.00, for cleaning the rental unit. The Landlord stated that the rental unit was not properly cleaned at the end

of the tenancy and the Tenant stated that the rental unit was cleaned at the end of the tenancy. The Landlord submitted two photographs of the rental unit that were taken before the end of the tenancy, which do not help establish the cleanliness of the rental unit at the end of the tenancy. The Landlord submitted a photograph of the bathroom, which he stated was taken after the end of the tenancy. While this photograph shows minor damage to the bathroom, it does not help to establish that the rental unit was in need of cleaning at the end of the tenancy.

The Landlord is claiming compensation, in the amount of \$30.00, for rekeying the lock to the rental unit, which he stated was necessary because the Tenants had not returned the keys. The Landlord submitted a receipt to show that he incurred this expense. The Tenant acknowledged that they did not return the keys to the rental unit. He stated they did not return the keys because they were waiting to meet with the Landlord to complete the condition inspection report at the end of the tenancy, at which time they intended to return the key.

The Landlord is claiming compensation, in the amount of \$210.00 for the time he spent preparing for, and participating in, the dispute resolution hearing.

### **Analysis**

The evidence shows that the Tenant agreed to pay rent that included paying 50% of the utility bills. The evidence shows that the Tenant failed to pay utilities, as was required by their tenancy agreement. Section 26(1) of the *Act* requires tenants to pay rent whether or not the landlord complies with the *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. A tenant cannot arbitrarily refuse to pay a portion of the rent because they feel a landlord is not complying with his legal obligations. As there has been no evidence submitted to show that the Tenants has a right to deduct all or portion of their rent, I find

that the Tenants failed to pay utility bills, in the amount of \$241.20, and that this amount is still due to the Landlord.

The evidence shows that the Tenants did not steam clean the carpet at the end of the tenancy. I find that it is reasonable to expect Tenant to clean carpet at the end of the tenancy, and I find that the Landlord is entitled to compensation for cleaning the carpet, in the amount of \$101.63.

I find that the Tenants failed to comply with section 37(2)(b) of the Act when they did not return the keys to the rental unit at the end of the tenancy. I find they are required to return the keys regardless of whether a condition inspection report is completed at the end of the tenancy. As the Tenants did not return the keys to the Landlord, I find they must compensate the Landlord, in the amount of \$30.00, for the cost of rekeying the locks.

Whenever a person is claiming compensation for damages, the onus is on the person making the claim to establish that there are damages. In these circumstances, I find that the Landlord has submitted insufficient evidence to establish that the rental unit needed cleaning at the end of the tenancy, and I therefore dismiss his claim for compensation for cleaning the rental unit. In reaching this conclusion I was strongly influenced by the Tenant's assertion that the rental unit was cleaned at the end of the tenancy, and the lack of evidence to corroborate the Landlord's assertion that it was not cleaned.

The Act does not authorize me to award compensation for participating in a dispute resolution hearing, with the exception of ordering compensation for the cost of filing the Application for Dispute Resolution. On this basis, I dismiss the Landlord's application for compensation for the time he spent preparing for, and participating in, the dispute resolution hearing. I find that the Landlord's application has merit, and I find that the

Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### **Conclusion**

I find that the Landlord has established a monetary claim, in the amount of \$422.83, which is comprised on \$241.20 in unpaid utilities; \$101.63 for cleaning the carpets; \$30.00 for rekeying the lock; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order in that amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: December 22, 2008