



# Dispute Resolution Services

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

## Decision

Dispute Codes: MNR, MND, FF

## Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, for damages to the rental unit and to recover the filing fee for this proceeding.

## Issue(s) to be Decided

1. Are there arrears of rent and utilities and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?

## Background and Evidence

This tenancy started on December 1, 2007 and ended on November 30, 2008. Rent was \$700.00 per month plus a share of utilities. The Parties verbally agreed that the Tenant would pay \$100.00 per month for utilities which was one-half of the estimated cost of electricity, heat and water.

The Landlord claimed that the Tenant gave him verbal notice (by telephone message) on or about November 8, 2008 that she was ending the tenancy at the end of November. The Landlord said the Tenant did not pay rent and utilities for November, 2008 and as a result he served her with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on November 27, 2008. The Landlord sought loss of rental income for December, 2008 and January, 2009 but admitted that he did not try to re-rent the rental unit until mid-January, 2009.

The Tenant claimed that the Landlord left her a voice mail message confirming her verbal notice and said he wished her well. As a result, the Tenant argued that the Landlord accepted her verbal notice and that she should not be liable for a loss of rental income. The Tenant admitted that she had not paid rent and utilities for November, 2008.

The Landlord also claimed that the Tenant was responsible for paying an additional amount of utilities because she left the lights on in the rental unit over the summer

months when she was not home. The Landlord said he also discovered that the Tenant set the thermostat higher than room temperature and therefore likely incurred greater heating expenses. The Tenant argued that the Landlord was trying to get her to pay a greater share of the utilities than what they had agreed to.

The Landlord sought to be reimbursed one-half the cost of cable. The Landlord said he had an agreement with the Tenant that in exchange for her doing weeding on the rental property for a 6 month period, he would provide her with free cable for a 6 month period. The Landlord said the Tenant did not live up to her end of the bargain and he had to hire a lawn service to do the weeding for most of that time. The Tenant agreed that she was to do weeding in exchange for cable services but argued that the claim made by the Landlord did not take into account the approximate 10 hours of weeding that she did do.

The Landlord also claimed that at the end of the tenancy, the Tenant left various belongings behind which had to be removed and disposed of. The Landlord also claimed that it took him 15 hours to clean the rental unit although he sought to be compensated for only 6 hours. The Tenant admitted that she left some belongings behind but claimed that otherwise she left the rental unit in the same condition as it was at the beginning of the tenancy. A condition inspection report was not completed either at the beginning or at the end of the tenancy.

The Landlord also sought compensation for a lawn sprinkler system that he claimed might have been damaged by the Tenant when she backed over the lawn when she was moving out. The Landlord said he could not be sure if there was damage until later in the spring.

### Analysis

I find that there are rent and utility arrears for November, 2008 in the amount of **\$800.00**. Section 45 of the Act says that a Tenant must give a Landlord one clear month's notice that they are ending the tenancy. Section 52 of the Act says that the notice **must** be given in writing. If a Tenant ends the tenancy earlier, they may be liable to compensate a Landlord for any loss of rental income that results. A Landlord, however, has a duty under s. 7(2) of the Act to do whatever is reasonable to try to minimize his losses.

Although I find that the Tenant did not give the Landlord proper notice she was ending the tenancy, I find that the Landlord's failure to take any steps to re-rent the rental unit until January 15, 2009 disentitles him to recover compensation for a loss of rental income for December, 2009 and January, 2009. As a result, that part of the Landlord's application is dismissed.

The Landlord claimed that he told the Tenant sometime in October, 2008 that he might be charging her more for utilities to reflect the actual cost, however, the Tenant claimed it was not until November, 2008 that the Landlord advised her that he intended to recover "underpayments" or charge her more for her disproportional use. Consequently, I find there is insufficient evidence of an agreement between the Parties that the Tenant was responsible for one half of the **actual** cost of utilities and that the Tenant would be responsible for compensating the Landlord for amounts in excess of those paid. Furthermore, the Landlord cannot unilaterally change the Parties' agreement that she pay 50% of the estimated cost of utilities by requiring her to pay more due to her alleged disproportionate use and this part of the Landlord's application is also dismissed.

I find that it was a further term of the Parties' tenancy agreement that in exchange for doing weeding on the rental property, the Landlord would pay one-half of the Tenant's share of the cable bill for a 6 month period. The Parties agree that the Tenant did not do weeding for the full 6 months but acknowledge that she did do about 10 hours worth. There was no agreement as to the value of the Tenant's 10 hours of work. Section 6(3)(c) of the Act says that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. I find that it was not sufficiently clear what the value of the Tenant's work was to be during the initial 6 month period and therefore that part of the Parties agreement is unenforceable.

However, I find that the Tenant was still responsible for one-half of the cable bill for the following 3 month period. The Landlord claimed the total monthly cable bill was \$38.95 per month but also claimed that the Tenant's share of this was \$23.60 per month. I find that the Landlord's distribution of the cable bill does not reflect the Parties' agreement, and accordingly, I award the Landlord **\$58.43** representing one-half of this expense.

I find that there is no evidence to conclude that the sprinkler system to the lawn on the rental property was damaged by the Tenant and that part of the Landlord's claim is dismissed. In the absence of a condition inspection report, I find there is insufficient evidence that the Tenant left the rental unit unclean at the end of the tenancy. However, I find that the Tenant did leave some of her belongings behind which had to be removed by the Landlord and disposed of. Consequently, I award the Landlord **\$20.00** representing this part of his claim.

As the Landlord has been partially successful in this matter, I find that he is also entitled to recover one-half of his filing fee for this proceeding or **\$25.00**. In summary, the Landlord will receive a monetary order for the following:

|                             |          |
|-----------------------------|----------|
| Rent arrears Nov. 2008:     | \$700.00 |
| Unpaid utilities Nov. 2008: | \$100.00 |
| Unpaid cable:               | \$58.43  |

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|-------------------|----------------|
| General Cleaning: | \$20.00        |
| Filing fee:       | <u>\$25.00</u> |
| BALANCE OWING:    | \$903.43       |

### Conclusion

A Monetary Order in the amount of **\$903.43** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that court.