



# **Dispute Resolution Services**

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

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD and FF

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid utilities of \$1,012.13 served on July 31, 2009. The landlord also sought a Monetary Order for the unpaid utilities recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

This matter was originally dealt with as a direct request hearing on written submissions only, but was adjourned to the present telephone conference call hearing on the grounds that the delay between the beginning of the tenancy and notice to the tenant of unpaid utilities required the more detailed examination of a participatory hearing.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to the remedies sought.

## **Background and Evidence**

This tenancy began on September 6, 2008. Rent was \$1,295 and the landlord held a security deposit of \$647.50. In May of 2009, the tenant moved to the adjoining larger rental unit, rent increased by \$100 per month and the tenant paid an additional \$50 on the security deposit.

During the hearing, the landlord made reference to the standard form rental agreement and noted that the check box for heat, included in the menu of utilities and facilities included in the rent, was not selected. He stated, therefore, that the tenant had agreed to pay for heat and had not done so.

The building manager gave evidence that she had told the tenant at the beginning of the tenancy, and again in December of 2008 that heat was not included and that she was expected to open an account with Teresen Gas in her own name.

## **Analysis**

On examining the rental agreement, I find that it does not offer heat as part of the rent. However, I find that there is no express statement to the effect that the tenant is responsible for opening an account with the gas company. The landlord stated during the hearing that he has since modified his rental agreements with an addendum that makes this requirement explicitly clear.

I find that the delay in advising the tenant in writing of the growing arrears in gas bill payments indicates that the landlord could have monitored the tenancy a little more closely to catch the error earlier when it was more manageable.

Given that I find that both parties have contributed to this dispute, I find that the unpaid gas bills should be split equally between the parties at  $\$1,012.13 / 2 = \$506.06$ .

I further find that the parties should split the filing fee for this proceeding equally and add \$25 to the landlord's award for that purpose.

On hearing that determination, and in discussing a repayment plan of approximately \$100 per month with the tenant, and on the understanding that the tenant would set up the gas account, the landlord withdrew his request for an Order of Possession.

## **Conclusion**

Thus, the landlord's copy of this decision is accompanied by a, Monetary Order, enforceable through the Provincial Court of British Columbia, for \$531.06 for service on the tenant.