

## **DECISION**

Dispute Codes      MNDC, MNSD, MNR, OLC, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order and an order that the landlord comply with the Act and a cross-application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on April 22, 2009, that rent was \$1,400.00 per month and that the tenant paid a \$700.00 security deposit. The rental unit is on the upper floor of a residence in which the lower floor contains two separate rental units. The parties further agreed that the tenant was served with a 2 month notice to end tenancy for the landlord's use of the rental unit (the "Notice"). The parties disagreed as to the date on which the notice was served. The landlord claimed it was served on December 31 and the tenant claimed it was served on January 2.

The tenant testified that on January 21 he gave the landlord his forwarding address in writing. The landlord denied having received the tenant's forwarding address on this date. The tenant testified that on January 25 he sent the landlord an email advising that he would be vacating the rental unit on February 3. The tenant further testified that he telephoned the landlord several times and left messages but the landlord did not return his calls or respond to his email. The landlord testified that he lost the password to the

email account to which the tenant claimed to have sent the email and therefore did not receive the notice that the tenant would be vacating on February 3.

The landlord claimed that the tenant had told the landlord that he would not vacate the unit until the end of March and that the landlord was not aware that the tenant had vacated the rental unit until April when the landlord entered the unit. The landlord acknowledged having received the tenant's application for dispute resolution, filed on February 22, and initially thought he received it in the month of February but said he was not sure of the date he received it and thought it could have been much later. The landlord claimed that the tenant was obligated to pay hydro costs for the rental unit and provided a copy of the tenancy agreement which shows that hydro was not included in the rent. The landlord claimed that at the outset of the tenancy he told the tenant that he was responsible to pay 50% of the hydro costs if both of the lower units were occupied, 75% of the hydro cost if just one of the lower units was occupied and 100% of the hydro costs if neither of the lower units was occupied. The tenant denied that the landlord provided any such direction and claimed that the landlord told him he was responsible for 50% of the hydro costs. The tenant claimed that the landlord did not ask for hydro payments during most of the tenancy and took the position that because the landlord did not give the tenant invoices and request payment, the landlord had broken the agreement and was therefore not entitled to collect hydro costs from the tenant. The landlord testified that he regularly gave the bills to the tenant during the tenancy. The landlord entered into evidence copies of the hydro bills for the following time periods and amounts:

April 1 – May 7 – total bill for this period is \$249.60 + GST of \$19.19 = 262.08 or \$7.08 per day. Tenancy began April 22; 16 days of tenancy. \$7.08 x 16 = \$113.28	\$ 113.28
May 8 – July 8	\$ 246.19
July 9 – September 8	\$ 169.14
September 9 – November 6	\$ 291.63
November 7 – January 8	\$ 636.87
<b>Total:</b>	<b>\$1,457.11</b>

The tenant seeks compensation pursuant to section 51(1) of the Act and the return of his security deposit. The landlord seeks compensation for loss of income for the months of February and March and \$900.00 for hydro costs which represents approximately 62% of the amount he was invoiced by BC Hydro.

### Analysis

First addressing the tenant's claim, section 51(1) of the Act provides as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that the tenant was entitled to receive compensation equivalent to one month's rent. The tenant was entitled to end the tenancy early upon 10 days notice to the landlord pursuant to section 50 of the Act. However, the Act does not recognize email as an effective form of service. I am unable to find that the landlord received the tenant's written notice that he would be ending the tenancy on February 3 and therefore find that the January 25 email was not effective to end the tenancy on February 3. The tenant received his compensation under section 51(1) when he did not pay rent for the month of February as he was obligated to do. I dismiss the tenant's claim for compensation.

Turning to the landlord's claim, I find it more likely than not that the landlord received the tenant's application for dispute resolution in February and find that the landlord had knowledge at that time that the tenant had already vacated the rental unit. Further, the tenant did not pay rent in February or March and I find it unlikely that the landlord would not have known that the tenant was no longer residing in the unit. Further, the landlord gave the tenant notice to end the tenancy on the grounds that he or his close family member was moving into the rental unit. The landlord presented no evidence showing that he expected to receive rent paid by himself to himself and therefore I find that he cannot have suffered any loss of income. The landlord's claim for loss of income is dismissed.

I find that the tenancy agreement provides that hydro is not included in the rent. Regardless of whether the landlord made attempts to collect the hydro payments, I find that the tenant was obligated to pay it. There is nothing in writing indicating the percentage of the hydro that the tenant was expected to pay and as it was the landlord's obligation to communicate this clearly to the tenant and document it, I accept the tenant's testimony that it was agreed that the tenant would pay 50% of the costs regardless of how many of the lower suites were occupied. I find that the landlord is entitled to recover 50% of the hydro costs incurred as represented on the invoices provided and I award the landlord \$728.56.

As the tenant has been unsuccessful in his claim, he must bear the cost of his filing fee. I find that the tenant should pay the landlord \$50.00 for the filing fee paid by the landlord.

### Conclusion

The tenant's claim is dismissed in its entirety. The landlord is awarded \$778.56. I order the landlord to retain the \$700.00 security deposit in partial satisfaction of his claim and I grant the landlord a monetary order under section 67 for \$78.56. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: June 04, 2010

---