



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes MNDC, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, a Monetary Order to recover the filing fee and other issues.

The tenant served the landlord by registered mail on April 13, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The tenants and the landlords agent appeared gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

This tenancy started on June 15, 2009 and ended on November 30, 2009. The tenants paid a monthly rent of \$1,495.00 on the first of each month. The tenants paid a security deposit of \$750.00 on June 15, 2009.

The tenant testifies the property they rented had another cabin on the site which the landlord rented to another tenant. The tenant states that he went to city hall and was told the property was an illegal dwelling and that he would have to move out because when the city acted on the information the tenant had provided the property would be made vacant by them.

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The tenant states that while living at the property there was a gas leak on September 20, 2009. He had turned on the gas lines and the house filled up with a gas smell. The tenant states he had to shut the gas off to the house and after searching he found an improperly capped gas line behind the stove. The tenant claims he contacted the landlord and informed him of the gas leak and told him he was going to get all the gas lines to the house serviced properly and informed the landlord that he must pay for this but he states the landlord refused.

The tenant states he had a technician come to the house on October 06, 2009 and he had him service the furnace, two fire places, and cap the pipe behind the stove. The technician told the tenant that one of the fire places could not be used as it was unstable. The tenant states he informed the landlord of this work and states he just wanted the house made safe for his and his wives use. The tenant states none of the gas appliances carried a certification sticker to show when they had last been serviced. The tenant testifies he paid for the technicians work to service the furnace and fire places but he was not charged to cap the gas line behind the stove.

The tenant states he moved from the property on November 18, 2009 but continued to be responsible for the house until the end of November, 2009. The tenant states that on November 18, 2009 he turned off the gas supply to the house. The other tenant was still using the gas as they had an arrangement to share the utility bills. The tenant states that on March 15, 2010 he received a bill from the gas company for gas usage from November 19 to December 01, 2009 which the landlord refused to pay and which should have been the responsibility of either the landlord or the other tenant.

The tenant seeks the following costs:

- \$787.50 for moving from the house as he claims it was an illegal unit and if he had known this he would never have rented it.
- \$1,000.00 for the purchase of a hall rug for the property which the tenant still has in his possession, but has no use for.
- \$808.18 for the cost of fitting a security system at the house before he had to move out
- \$380.00 for cleaning the rec room rug when he moved into the house

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- \$100.00 for phone lines to be repaired and to have extensions put in the bedroom and living room
- \$45.00 which he spent to replace the washing machine hose which blew the first time they used the machine
- \$250.00 for two loads of gravel to patch the driveway to the property
- \$1,190.00 for work carried out by the tenants to clear bushes and weeds to enhance the property for their long term use
- \$728.00 for the cost of installing a satellite service as the lines in place were illegal and the landlord verbally agreed satellite would be part of the rental
- \$225.75 for the gas line check and furnace service
- \$500.00 for the return of all BC Hydro bills paid throughout the tenancy
- \$605.44 for the return of all Terasan gas bills paid throughout the tenancy
- \$100.00 for the extension of the tenants PO Box usage for three months
- \$8, 222.00 for the return of all rent paid during the tenancy as this is an illegal rental.

The landlords Property manager (Agent) disputes the tenants claims states the main house which was the tenants rental unit was not an illegal rental and the tenants took it upon themselves to move out of the property before the city had made any determinations of whether or not an illegal suite was located on the property. The landlord refers to the letters from the city concerning the alleged illegal suite. The landlords' agent states he met with an inspector from the city at the property and was told they would have to do some research to see if the cabin on the property was an illegal suite. It was determined by the city some weeks later that the property had been converted to a multiple family dwelling and the additional dwelling i.e. the cabin was the illegal suite not the main residence. The landlords' agent states they took immediate action and made it a single family dwelling and as the tenants had already moved out the other tenant moved into the main residence.

The landlord states the utility bills had been shared between the two tenants during the tenancy, the tenants decided on the percentage of bills to be paid by each of them. He claims as the tenancy did not formally end until November 30, 2009 the tenant continued to be responsible for

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his utilities. The landlord also disputes that the tenant is not entitled to recover any of his utilities for the gas or electricity that he actually used during his tenancy.

The landlords' agent states that on August 04, 2009 the tenant made an urgent complaint about a gas smell, a technician from Terasan Gas came out but no gas leak was found. He suggested to the landlord that a plumber inspect the crawl space to see if ventilation is required to get rid of stale smells. A plumber came and installed vents to deal with the issue. On September 29, 2009 Terasan gas were called out again for a suspected gas leak however the landlord states no leaks were found again and the invoices from Terasan Gas confirm this.

The landlord states the tenant wanted them to pay to have the gas line capped behind the stove and to pay to service the furnace and fire places. The landlords' agent states they were happy to pay to have the gas line capped but as the furnace and fireplaces had been serviced prior to this tenancy commencing he was not prepared to pay again and he did not authorise the work to be carried out. If there was a problem with the fireplace the landlords' agent claims he was not notified of this by the tenant. The landlord states the plumbers work does not need to have a sticker placed on the appliances as the invoices confirm this work was carried out. The landlords agent states if the tenants thought there were emergency repairs to be carried out they are required to contact the landlord twice and they failed to do this.

The landlords' agent states the tenants were aware at the start of their tenancy that they were responsible to maintain the gardens. The landlords' agent argues that the landlord should not be held responsible for any money the tenants have paid if it was not authorised work or to pay for the tenants labour costs in maintaining the gardens.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenants moved from the rental house before it was confirmed by the city that there was an illegal dwelling on the property. I further find that this illegal dwelling had no connection to the tenant's tenancy or their rental unit and was in fact a separate unit on the property. I refer both parties to the Residential Tenancy Policy Guidelines #20 which deals with

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the subject of illegal contracts. This states that even if the tenants dwelling was deemed to have been the illegal dwelling municipal by-laws are not statutes for the purposes of determining whether or not a contract is legal, therefore a rental in breach of a municipal by-law does not make the contract illegal. Consequently, the tenants could have continued their tenancy but instead choose to move from the rental house. It is therefore my decision that the tenant is not entitled to recover any costs incurred for moving. I also find the tenants are not entitled to recover costs claimed for the hall carpet, security system, garden work, PO Box extension or the return of rent paid throughout the tenancy as it was their choice to do these things and their choice to end the tenancy.

I further find when a tenant's evidence is contradicted by the evidence of the landlords, the burden of proof lies with the person making the claim and they will generally need to provide additional, corroborating evidence to satisfy the burden of proof. With regard to the tenants claim for cleaning the rec room rug; I find the tenant has provided no evidence to support this claim that the landlord had not cleaned the rug before their tenancy started; with regard to the tenants claim for a repair to the phone lines no evidence has been provided that the phone lines were broken or that the landlord gave authorization for this work to be carried out; with regard to the cost of the gravel if the tenants purchased this gravel to enhance the property they intended to live in if they later decided to move out they cannot claim against the landlord for this; with regard to the tenants claim for the washing machine hose he failed to present a bill to the landlord for this repair and has provided no evidence of the repair; with regard to the tenants claim for cost incurred in providing satellite service; in the absence of a written tenancy agreement, the burden of proving that an agreement exists lies with the person making the claim however in this case it is just the tenants word against that of the landlords and when it is just one persons word against that of the other that burden of proof is not met. I am therefore, not prepared to accept that an agreement was reached to provide satellite services to be included in the rental agreement.

With regard to the tenants claim for the costs of servicing for furnace and fireplaces; i find as the landlord did not authorize this work to be completed and the gas company found no evidence of

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a gas leak then the tenant must bear these costs. The landlord was prepared to cover the costs of capping the gas pipe but the tenant testifies that he did not incur a cost for this work.

With regards to the tenants claim to recover all his gas and hydro usage for the term of his tenancy; I find the tenant paid for gas and Hydro used during this period and as a tenancy was in place and he used these services he is not entitled to recover these amounts from the landlord. I do however accept that the tenant turned off the gas to the unit on November 18 and the remainder of this bill for the period from November 18 to December 01, 2009 would be gas usage from the other tenant and as such this tenant should not have to pay for the other tenants' gas. Therefore, I find the tenant is entitled to a refund from the landlord for this amount to the sum of **\$110.07** which includes gas used for the period of 12 days, carbon tax, delivery charges and GST pursuant to section 67 of the *Act*.

As the tenant has been largely unsuccessful with his claim I find he must bear the cost of filing his own application.

## Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$110.07**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' application is dismissed without leave to reapply.

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: August 13, 2010.

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Dispute Resolution Officer