



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNSD, FFX, O

### Introduction

This was the hearing of applications by the tenants and the landlord. The landlord applied for a monetary order in the amount of the security deposit that it holds. The tenants applied for a monetary order for compensation and for the return of the security deposit.

### Issues(s) to be Decided

Is the landlord entitled to a monetary order and an order to retain the security deposit?

Are the tenants entitled to the return of the security deposit? Are they entitled to a monetary order and if so, in what amount?

### Background and Evidence

The rental property is a house in Whistler. There are two suites. The rental unit is the upper portion of the house containing three bedrooms. There is a second basement suite in the property. The tenancy began on September 1, 2009 for a fixed term ending August 31, 2010. The agreement provided that the tenants must vacate the rental unit at the end of the term. Monthly rent was \$2,500.00. The tenants paid a security deposit of \$1,250.00 on September 1, 2010. The agreement provided that the tenants were responsible for utilities. An addendum to the tenancy agreement provided that:

The Tenants agree to be responsible to open an account with BC Hydro and Terasen Gas from September 1, 2009 forward. These accounts will also cover

the hydro and gas for the suite and therefore the Tenants' responsibility. The landlord does not include cablevision telephone or internet to the property.

When the tenant, T.S. met with the landlord's representative, W.T. before the tenancy commenced W.T. told her that the utilities would be approximately \$200.00 per month and the tenants would pay the utilities for the whole house including the basement suite.

In December, 2009 the tenant started complaining about the amount of the utility bills. She provided copies of her e-mails to the landlord's representative with respect to the cost for utilities, the difficulty heating the rental property and the requirement that they pay for the utilities for the basement suite. In January the tenant sent an e-mail to the landlord's representative and reported that the utility bills for the past month totalled \$815.00. She said that the tenants could not afford the utility bills. The tenants requested that the utilities for the basement suite be separately metered. The landlord replied that it was impossible to separately meter the utilities at the time. In January, 2010 the landlord agreed to pay the tenants a one-time compensation payment of \$500.00 toward the utility bills.

On March 27, 2010 by e-mail to the landlord's representative the tenant advised the landlord's representative that the tenants intended to move out of the rental unit and find a more affordable place to live. On April 7, 2010 the tenant advised that she had rented other accommodation commencing May 1, 2010. The tenant placed internet and newspaper advertisements offering the unit for rent.

The tenants moved out of the rental unit on April 30, 2010. On May 10, 2010 the landlord applied for a monetary order to keep the security deposit of \$1,250.00. The landlord claimed that the tenants breached the fixed term lease by abandoning the house at the end of April, 2010.

The tenant applied for the return of her security deposit, including double the amount of the deposit and she claimed for reimbursement of utilities in the amount of \$1,040.00.

at the hearing the tenant acknowledged that she was not entitled to an award of double her security deposit because the landlord made a timely application to claim the deposit. The tenant therefore reduced her claim to \$2,290.00

The landlord's representative testified that the landlord was unable to re-re-rent the unit for several months after the tenants moved out but the landlord has chosen to limit its claim to the amount of the security deposit that it holds. He submitted that the tenants had abandoned the rental unit and their reasons for breaching the fixed term tenancy agreement were without merit. The landlord's representative testified that it was a term of the tenancy agreement that the tenants would be reimbursed if the average monthly utility bill exceeded \$200.00. He testified that the tenants were told that the rental unit was rented to the tenants for less than the market rent because the tenants were responsible for payment of utilities for the basement suite.

The tenant testified that the landlord's representatives never told her that the rent was less than market rent or that the rent was reduced because the tenants were responsible for payment of utilities. She said that it was not until the tenants told the landlord's representative that they were moving that the representative proposed some further reimbursement for the utility bill.

### Analysis and conclusion

The residential tenancy Policy Guideline with respect to landlord and tenant responsibilities contains the following comment:

#### **SHARED UTILITY SERVICE**

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable<sup>4</sup> as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy

agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

The tenants were not told before the tenancy that they were receiving a reduced rent on account of having to pay utilities for a suite they did not occupy. The landlord has not provided convincing evidence to show that the monthly rent of \$2,500.00 was a reduced rent, or was below market value.

The tenant's requested that the landlord change the metering system so that the utilities consumed by the tenants of the lower suited would be separately metered and billed. The landlord's representative said that it was impossible at that time. It was after this that the tenants told the landlord they intended to move.

I find that the term of the tenancy agreement that required the tenants to pay for utilities consumed by the downstairs tenant was oppressive and grossly unfair to the tenants and therefore unconscionable and that the landlord's refusal to change the metering of utilities justified the tenants in giving notice ending the fixed term tenancy before the end of the term. The landlord's response offering some form of reimbursement was too vague and too late, coming as it did after the tenants gave notice that they intended to move.

Because I have found that the tenants were justified in ending the tenancy before the end of the fixed term it follows that there is no basis for the landlord's claim that the tenants abandoned the house and breached the fixed term tenancy agreement. The landlord's claim is dismissed without leave to reapply.

I find that the tenants are entitled to recover the security deposit in the amount of \$1,250.00. I find that the tenants are entitled to compensation for the lower tenant's share of the utilities. The applicant calculated monthly utilities to be \$330.00 per month and attributed \$130.00 per month to the lower tenant's consumption. She claimed \$1040.00 compensation for the lower tenant's share for eight months. The tenants'

calculation was arrived at after deducting \$500.00 reimbursement paid from the gross amount of the utilities. The gross utilities were \$3,147.34. The average monthly utilities were approximately \$393.00. I find that a reasonable monthly share for the lower tenant would be one third of that amount or \$131.00. For the eight months of the tenancy this amounts to \$1,048.00. I find that the \$500.00 reimbursement should be deducted from that amount. I award the tenants the sum of \$548.00 as reimbursement for the lower tenant's share of utilities. The tenants are entitled to recover the \$50.00 filing fee for their application for a total award of \$1,848.00 and I grant the tenants an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.