



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the landlords' application for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application.

One of the landlords attended the conference call hearing, and the tenant also attended. Both parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All information has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

This fixed term tenancy began on August 11, 2009 and was to expire on July 31, 2010, however the tenant vacated the rental unit on June 22, 2010. Rent in the amount of

\$775.00 per month was payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$387.50.

The landlord testified that the tenant vacated the rental unit prior to the end of the fixed term and claims \$775.00 for loss of revenue. She further stated that the tenant did not provide the landlord with written notice to end the tenancy in accordance with the Act or the tenancy agreement, but did request that the landlord sign a Mutual Agreement to End Tenancy. The landlord did not sign the mutual agreement and advised the tenant that unless she received written notice of the tenant's intention to vacate, the landlord could not advertise the unit for rent. The tenant faxed written notice on June 17, 2010. That notice, a copy of which was provided in advance of the hearing, states that the tenant's intention was to vacate the unit on or before June 23, 2010 and is dated June 15, 2010.

The landlord further testified that the tenant failed to pay utilities as required under the tenancy agreement, and \$93.20 remains outstanding for hydro as well as a number of water bills:

- August 15, 2009 to December 31, 2009 in the amount of \$37.09
- Jan 1, 2010 to April 30, 2010 in the amount of \$85.51
- May 1, 2010 to June 22, 2010 in the amount of \$47.07

The landlord requests payment of the utilities, totalling \$262.87, as well as liquidated damages as set out in the tenancy agreement in the amount of \$300.00.

The landlord further testified that advertisements are run for more than one rental unit at a time, and on May 13, 2010 she started to advertise exclusively for this rental unit.

The tenant testified that she spoke with the landlord about a mutual agreement to end the tenancy. The landlord stated that she was hopeful they can work it out when the parties spoke on March 18, 2010. On April 9, 2010 the landlord promised to advertise

the rental unit for rent, and on May 17, 2010 she received an email from the landlord as an indication of her good faith to settle. On June 2, 2010 the tenant checked Craig's List to see if the landlord had advertised the unit for rent, but did not locate an advertisement.

The tenant further testified that on July 27, 2010 an electrical inspector advised that the hydro bills were so high due to some problems with the wiring in the house, although this evidence was disputed by the landlord, who testified that she was told by BC Hydro that the bills have decreased likely because a new roof was put on the house.

The tenant further testified that she was expected to pay utilities for 2 units within the rental building. From December, 2009 to March 31, 2010 the lower unit was rented to another tenant and the landlord charged her the full amount of hydro for February 4, 2010 through April 1, 2010 even though the other tenant paid hydro up to the end of March, 2010. Also, the tenancy agreement states that the tenant will be reimbursed \$100.00 at the end of the fixed term, and the tenant requests that the \$100.00 be used to pay the outstanding \$93.20 hydro charge. The tenant provided a copy of a cheque dated July 15, 2010 written to the tenant in Unit B in the amount of \$65.00 and stated that she had already given the post-dated cheque to that tenant before receiving the landlord's note stating that the amount of \$61.23 was to be paid directly to the landlords and not the other tenant or BC Hydro.

### **Analysis**

I accept the evidence of the tenant that she tried to have a mutual end to the tenancy prior to the end of the fixed term and felt she had been lead to believe that the landlord would sign the Mutual Agreement to End Tenancy. However, the landlord did not sign the form, and therefore did not mutually agree to end the tenancy.

I also accept the evidence of the landlord that advertisements are run by the landlord for more than one unit at a time, and an exclusive advertisement started on May 13, 2010, which is well before the tenant vacated the rental premises. Therefore, the landlord has

established that she attempted to mitigate any loss of revenue caused by the tenant's early departure.

With respect to the unpaid utilities, I have examined the tenancy agreement. It states that water and hydro are the tenant's responsibility and will be assessed based upon use of the main meter and sub-meter for electric, as well as use and occupancy of Unit B. The landlord determines the equitable split on water and hydro usage based upon the tenant's bill and use of a sub-meter for electric, and understanding of use and occupancy of both units A and B. When unit B is empty, the tenant assumes full responsibility for the building hydro. This tenant resides in unit A. When unit B becomes occupied, the landlord may direct those tenants to put the hydro in their name and will then determine the equitable split of hydro between units A and B based upon use and occupancy. Further, the landlord guarantees that it will be at most 40% of the hydro bill. The landlord testified that the first hydro bill for \$56.80, being 30% was paid by the tenant, and that claim is withdrawn. However, I also find that the second hydro bill is the responsibility of the tenant, and the landlord has calculated it at 33%, or \$93.20. The tenant did not remain in the unit to the end of the fixed term, and therefore is not entitled to recovery of the \$100.00 for utilities as set out in the tenancy agreement.

I accept the evidence provided by the tenant that she paid the tenant in Unit B \$65.00 for hydro usage, however nothing in the tenancy agreement states that the tenant may pay another tenant. It states that the hydro will be at most 40% when Unit B is occupied.

### **Conclusion**

I find that the landlord has established a claim for \$775.00 in loss of revenue. The landlord is also entitled to liquidated damages in the amount of \$300.00, \$93.20 for hydro, \$169.67 for water and the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$387.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,000.37. This order may be

filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

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: November 30, 2010.

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Dispute Resolution Officer