



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Landlord withdrew his application for an Order of Possession as the tenancy had ended.

At the beginning of the hearing, one of the Tenants (C.P.) sought an adjournment as she claimed that she does not wish to deal with the stress of the hearing and the other Tenant (R.C.) could not attend the hearing but had to work. The Tenant admitted that she received the Landlord's hearing package on October 22, 2010 but said her spouse was unable to arrange to have the day or the hour scheduled for the hearing off of work. The Landlord objected to an adjournment on the grounds that the Tenants had avoided dealing with him regarding the unpaid rent and utilities prior to the end of the tenancy and moved without giving him a forwarding address. Consequently, the Landlord argued that the Tenants were trying to further avoid dealing with this claim. As the Tenants provided no compelling reason as to why one of them could not deal with this claim in the absence of the other, I denied the Tenants' adjournment request.

The Tenant also claimed at the beginning of the hearing that she had not received the Landlord's evidence package. The Landlord claimed that because he had no forwarding address for the Tenants, he left a telephone message for them advising the Tenants that they could pick up the evidence package from the mail box at the rental unit. The Tenant said she received a telephone message from the Landlord but denied that it said anything about picking up an evidence package. Section 88 of the Act sets out the various ways that documents (such as evidence) may be served on a Party. As the rental unit was not the residence of the Tenants when the evidence package was left in the mail box, I find that it was not served as required by s. 88 of the Act. Consequently, the Landlord's evidence package is excluded pursuant to s. 11.5(b), however, I permitted the Landlord to refer to that documentary evidence in his oral evidence.

### Issues(s) to be Decided

1. Are there arrears of rent and utilities and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?



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## Background and Evidence

This fixed term tenancy started on August 1, 2010 and was to expire on July 31, 2011. The Landlord says the tenancy ended on October 25, 2010 when the Tenants moved out however the Tenants claim that they moved out on October 22, 2010. Rent was \$1,000.00 per month payable in advance on the 1<sup>st</sup> day of each month plus utilities. The Tenants paid a security deposit of \$500.00 at the beginning of the tenancy.

The Parties agree that the Tenants' rent cheque for October 2010 was returned for non-sufficient funds and they failed to provide the Landlord with replacement funds. The Parties also agree that on October 13, 2010, the Landlord served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities dated October 13, 2010 by posting it on the rental unit door.

The Landlord also claimed that the Tenants have a utility account (for hydro) in the name of one of them but they have not paid anything on that account since the tenancy began. The Landlord said that he made an inquiry to the municipality a couple of days ago and was advised that the current balance owing is \$503.00 which he believed did not include a deposit of \$250.00 but he could not be certain. The Landlord said that if this amount remains unpaid, it will be transferred to his tax account.

The Tenant (C.P.) initially claimed that she was unaware if there were utility arrears because that account was in the name of the other Tenant (R.C.) and he dealt with the municipality regarding it. The Landlord said the Tenant's spouse (R.C.) advised him that C.P. was dealing with the utility account. The Tenant said she believed her spouse had made a payment plan some time ago with the municipality. The Tenant also said that she believed the amount owing was less than \$503.00 but admitted that she has not inquired with the municipality to confirm what amount is owed even though the Landlord's application sought an amount for unpaid utilities.

The Landlord claimed that on October 26, 2010 he advertised the rental unit for immediate occupancy in a local newspaper and in two on-line publications but has had few responses. Consequently, the Landlord sought a loss of rental income for November 2010. The Tenants argued that they should not be responsible for this amount because they vacated the rental unit when the Landlord asked them to (ie. the effective date of the Notice) and therefore he had time to re-rent it.

## Analysis

As the Parties agree that rent for October 2010 is unpaid, I award the Landlord the amount of \$1,000.00. The Tenant was given an opportunity to contact the



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municipality following the hearing to confirm the amount of outstanding utilities and to provide that information to the director. The Tenant provided a fax in which she claimed that the last statement amount was \$204.89 (although there would be another bill issued soon with additional amounts). Consequently, I find that the Landlord is entitled to recover utility arrears in the amount of \$204.89 as claimed on his application and I award the Landlord that amount.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. However, s. 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that the tenancy ended when the Tenants failed to pay the rent owed for the month of October and thereby breached the tenancy agreement. Consequently, I find that the Tenants are liable to compensate the Landlord for a loss of rental income he incurs as a result. However, the Landlord must take reasonable steps to try to minimize his losses by re-renting the rental unit as soon as possible. In the circumstances, I find that the Landlord's application for a loss of rental income for the whole month of November 2010 is premature and instead I award him instead a loss of rental income to November 15, 2010. If the Landlord suffers a further loss of rental income he may apply for further compensation.

As the Landlord has been successful in this matter, he is entitled pursuant to s. 72 of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the monetary award. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid Rent (October):	\$1,000.00
Loss of Rental Income (Nov. 1-15):	\$500.00
Unpaid Utilities:	\$204.89
Filing Fee:	<u>\$50.00</u>
Subtotal:	\$1,754.89
Less: Security Deposit:	<u>(\$500.00)</u>
Balance Owing:	\$1,254.89



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## Conclusion

A monetary order in the amount of **\$1,254.89** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 01, 2010.

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Dispute Resolution Officer