



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR; MNDC; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for loss of revenue and utilities; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was established that the Landlord personally served the Tenant with the Notice of Hearing documents and copies of his documentary evidence at her place of employment on March 3, 2011, in the afternoon. It was established that the Tenant provided the Landlord with copies of her documentary evidence, by registered mail, on March 30, 2011.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for loss of revenue for the month of March, 2011?
- Is the Landlord entitled to recover the cost of utilities from the Tenant for the month of March, 2011?

### **Background and Evidence**

The rental unit is a suite in a house. The Landlord occupies the main part of the house.

A copy of the tenancy agreement was provided in evidence. This was a one year term lease, commencing January 1, 2011. Monthly rent was \$550.00, plus 1/3 of the electrical bill, all of the gas bill and \$20.00 per month for cable. The Tenant paid a security deposit in the amount of \$275.00 on December 29, 2010.

The Landlord gave the following testimony:

The Tenant moved out of the rental unit, without notice, on February 23, 2011. The Landlord testified that the Tenant paid her share of utilities to and including February 7, 2011. The Landlord seeks a monetary award for loss of rent for the month of March, 2011; unpaid gas bills from February 7 to March 8, 2011 (\$71.80), and prorated from March 8 to March 31, 2011(\$42.09); and her share of the electrical bill from February 8 to March 31, 2011 (\$70.64).

The Landlord provided copies of utility bills in evidence.

The Landlord submitted that the Tenant forfeited return of the security deposit by terminating the lease early, further to the terms of the tenancy agreement.

The Tenant gave the following testimony:

The Tenant testified that she moved out of the rental unit without notice because she was afraid of the Landlord. She stated that the Landlord was behaving aggressively towards her and that she did not feel safe living in the rental unit. She testified that she did not give the Landlord her forwarding address, and instructed him to serve her at her place of employment.

The Tenant stated that the Landlord phoned her on March 28, 2011, and left a voice mail that her share of the gas bill was \$71.80, but that he did not provide her with a copy of the utility bill. She stated that the amount the Landlord claimed on his Application for Dispute Resolution, and in the documentary evidence she was served, differs from the amount he is now claiming during the Hearing.

The Tenant provided a copy of a letter she wrote to the Landlord, dated March 28, 2011, requesting the Landlord not to contact her again either at work or on her cell

phone and stating “any remaining issue regarding my tenancy should be handled during the resolution hearing on April 26, 2011”.

### **Analysis**

Section 45 of the Act provides ways by which a tenant may end a tenancy:

#### **Tenant's notice**

- 45** (1) A tenant may end a **periodic tenancy** by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a **fixed term tenancy** by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has **not corrected the situation within a reasonable period** after the tenant gives **written notice of the failure**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(emphasis added)

This tenancy was a fixed term tenancy and could not be ended by the Tenant (except with the consent of the Landlord) until the end of the fixed term, or in accordance with

the provisions of Section 45(3). In this case, I find that the Tenant ended the tenancy without complying with Section 45 of the Act.

Section 67 of the Act provides:

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenant did not comply with Section 45 of the Act when she ended the tenancy and that the Landlord suffered loss of revenue for the month of March as a result of the Tenant's failure to comply with the Act. The Landlord's application for loss of rent for the month of March, 2011 is granted.

The Tenant submitted that the Landlord did not provide her with copies of the utility bills dated March 8, April 6 and April 7. However, she testified that the Landlord called on March 28, 2011, to advise her of the amount he calculated she owed from the March 8<sup>th</sup> bill. On the same day, the Tenant wrote to the Landlord demanding he have no further contact with her by phone or in person until the Hearing date. In respecting those wishes, the Landlord was unable to provide her with copies of the bills and relied on her statement that any remaining issues could be handled at the Hearing. I find that the Landlord is entitled to a monetary award for the Tenant's share of utilities from February 8, 2011 to and including the March 31, 2011, in the total amount of \$184.53.

The Landlord has been successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord relies on a term of the lease that provides that the Tenant forfeits her right to return of the security deposit if she ends the lease prematurely.

Section 20(e) of the Act provides:

**Landlord prohibitions respecting deposits**

**20** A landlord must not do any of the following:

(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Section 5 of the Act provides:

**This Act cannot be avoided**

**5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Therefore, the clause in the tenancy agreement regarding forfeiture of the security deposit is of no force or effect and the security deposit must be administered in accordance with the provisions of the Act.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award.

The Landlord has established a monetary award, calculated as follows:

Loss of revenue	\$550.00
Recovery of the filing fee	\$50.00
Subtotal	\$784.53
Less security deposit	- \$275.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$509.53</b>

**Conclusion**

I hereby grant the Landlord a Monetary Order in the amount of **\$509.53** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 11, 2011.

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Residential Tenancy Branch