



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 4, 2011. Mail receipt numbers were provided in the Landlord's verbal testimony. Each Tenant is deemed to be served the hearing documents on March 9, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

The Landlord testified the parties entered into a month to month tenancy that began on November 1, 2009 and ended December 31, 2010. Rent was payable on the first of each month in the amount of \$1,700.00. The Tenants paid \$500.00 on September 18, 2009 as the security deposit. The Tenants provided the Landlord with their forwarding address in December 2010, prior to them vacating the rental unit.

The Landlord advised that around the beginning of December 2010 the Tenants told him verbally that they would be vacating the rental unit at the end of December 2010. The Landlord wrote up the written notice to end tenancy and requested that the Tenants sign it so he had their notice in writing. He confirmed the Tenants were out of the unit on approximately December 30, 2010. They left without paying the balance owed for November 2010 rent of \$300.00 and did not pay anything towards the December 2010 rent of \$1,700.00.

The Landlord advised the tenancy agreement did not include the cost of utilities so he is seeking a monetary order to cover the cost to refill the oil tank that is used to heat the house in the amount of \$466.01 and to cover the two payments of \$273.17 and \$716.67 that they had to pay to the municipality for the cost of water, sewer, and garbage removal, which are utilities not covered by the tenancy agreement.

I asked the Landlord why he provided a payment receipt for the \$273.17 being claimed for utilities to the municipality and not an invoice. He stated that they had both invoices one for \$65.06 and the other for \$716.67.

He confirmed that he has received two payments towards this debt from the Tenants since the tenancy ended. One payment was received January 1, 2011 in the amount of \$25.00 and the second payment was received February 1, 2011 in the amount of \$25.00.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a copy of the tenancy agreement, receipts for payments of utilities and heating oil, and copies of letters issued by the Tenants and the Landlord.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Tenants failed to pay the full November 2010 rent leaving a balance due in the amount of \$300.00 plus the full December 2010 rent of \$1,700.00 which is a contravention of section 26 of the Act that states a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore I find the Landlord has met the burden of proof to recover the costs of unpaid rent and I approve his claim in the amount of **\$2,000.00**.

The Landlord has claimed amounts for three utility payments made in the total amount of \$1,455.85 which is comprised of the following:

- \$466.01 for the cost of bioheat oil which is supported by an invoice for oil that was delivered to the rental unit on January 20, 2011.
- \$716.67 for the cost of utilities that had accumulated with the municipality and was supported by a statement dated November 29, 2010 that shows the accumulated balance from 2010 remained unpaid.
- \$273.17 which was paid to the municipality and was supported by a payment cashier receipt dated January 18, 2011.

After careful review of the aforementioned and the tenancy agreement I find the Tenants breached the tenancy agreement by failing to pay for the cost of utilities. I find there to be sufficient evidence to support the Landlord's claim in the amount of \$1,182.68 which includes the cost of bioheat oil of \$466.01 and the \$716.67 utility bill. The remaining claim of \$273.17 was supported by a cashier receipt that does not indicate what the payment was made for. Furthermore the Landlord provided contradictory testimony that the second utility bill was for \$65.06. Therefore I award the Landlord **\$1,182.68** for the cost of utilities and the balance of \$273.17 is dismissed without leave to reapply.

The evidence confirms the tenancy ended December 31, 2010 and the Tenants provided their forwarding address to the Landlord prior to the end of December 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than January 15, 2011. The Landlord filed his application on March 4, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

The Landlord has primarily been successful with his application, therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Unpaid rent for Nov. 2010 and Dec. 2010 (\$300.00 + 1700.00)	\$2,000.00
Cost of utilities (Bioheat 466.01 + Municipal 716.67)	1,182.68
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	<b>\$3,232.68</b>
Less Double Security Deposit of 2 x \$500.00 plus interest of \$0.00	-1,000.00
Less Payments Made by Tenants (2 x \$25.00)	-50.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$2,182.68</b>

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

### Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$2,182.68**. The Order must be served on the respondent Tenants and is enforceable through the Provincial Court 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: June 15, 2011.

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Residential Tenancy Branch