



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF, O

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, unpaid utilities, and other damages or loss under the Act, regulations or tenancy agreement. The tenants did not appear at the hearing. The landlord provided registered mail receipts as proof the tenants were served with the hearing documents via registered mail sent to the tenant's forwarding address on January 6, 2011. The landlord provided a copy of the tenants' notice to end tenancy which provides their forwarding address. The landlord also submitted that the landlord's evidence was served upon the tenants via registered mail sent to their forwarding address on June 10, 2011. All of the registered mail sent to the tenants was returned as unclaimed.

Section 90 of the Act deems service of documents five days after mailing even if the recipient refuses to pick up or accept the mail. Based upon the evidence before me, I was satisfied the tenants were notified of this hearing in a manner that complies with the Act and I proceeded to hear from the landlord without the tenants present.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent and utilities from the tenants?
2. Has the landlord established an entitlement to recover other damages or loss from the tenants?

### Background and Evidence

The one year tenancy commenced November 27, 2010 and ended January 6, 2011. The tenants were required to pay rent of \$1,100.00 on the 1<sup>st</sup> day of every month. The tenants were also required to pay for their own electricity and heat under the tenancy agreement. Hydro and natural gas bills are in the landlord's name and divided in half as there are two rental units on the same meter.

On February 7, 2011 the landlord was granted a monetary order for unpaid rent for unpaid rent for January and February 2011, unpaid utilities up to January 19, 2011, snow clearing for January 2011 and advertising costs incurred up to the date of that hearing. The landlord was authorized to retain the security deposit in partial satisfaction of those claims. The landlord was granted leave to reapply for losses incurred subsequent to the February 7, 2011 hearing.

In filing this application, the landlord sought recover of \$2,086.32 from the tenants. The landlord requested this claim be amended to \$2,677.51 to reflect actual amounts as indicated on the revised "invoice" served upon the tenants. I was satisfied the tenants were notified of the revisions and I amended the landlords claim to include the following amounts:

Description	Reason	Amount
BC Hydro January 20 – March 31, 2011	Tenants responsible for 50% of hydro	76.79
Snow shovelling	3 times, \$40.00 each. Tenants responsible for snow clearing. Done by landlord's employee 3 times in February.	120.00
Postage	Registered mail for dispute resolution.	62.77
Advertising	February and March 2011 advertising.	235.91
Unpaid rent	March 2011	1,100.00
Rent reduction for remainder of fixed term	8 months (April – November) x \$100.00/mo.	800.00
Filing fee		<u>50.00</u>
		\$ 2,677.53

The landlord testified that the unit was re-rented effective April 1, 2011 at a reduced rent of \$1,000.00 per month. The landlord provided a copy of the new tenancy agreement in support of this claim.

The landlord confirmed that advertising costs claimed with this application were not claimed in the previous application.

Provided as documentary evidence were copies of the tenancy agreement and the addendum, invoices for utilities and advertising, the tenancy agreement for the new tenants, registered mail receipts and the tenants' notice to end tenancy.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon review of the tenancy agreement I find the parties had a fixed term tenancy set to expire November 30, 2011. A tenant is responsible for paying rent for the duration of a fixed term tenancy and if a tenant ends the tenancy earlier than the expiry date the tenant may be held liable for paying rent for the remainder of the fixed term.

Upon review of the evidence before me, I accept that the tenants violated the tenancy agreement by ending the tenancy before the end of the fixed term. I further accept, based upon advertising invoices, that the landlord made reasonable efforts to re-rent the unit, which included offering the unit at a reduced rate in order to mitigate losses. Therefore, I grant the landlord's claims for unpaid rent for March 2011 in the amount of \$1,100.00 and the loss of rent in the amount of \$100.00 per month for the months of April through November 2011.

Upon review of the tenancy agreement and the addendum to the tenancy agreement I find the tenants responsible for paying 50% of the electricity and heat bills during the fixed term. The landlord has provided documentary evidence to prove the costs incurred by the landlord for hydro and gas up to the time the unit was re-rented. Therefore, I grant the landlord's claims to recover 50% of the hydro and gas bills from January 19, 2011 up until March 31, 2011.

Upon review of the tenancy agreement addendum I accept that the tenants were responsible for clearing snow from the driveway and sidewalk. However, the landlord's proof of his claim consisted of a receipt that does not indicate who performed the work or who paid the funds. Nor does the receipt indicate the dates on which the work was

performed. I find the landlord's evidence to be insufficient to verify the loss claimed by the landlord. Therefore, I dismiss this portion of the landlord's claim.

I am satisfied that in ending the tenancy earlier than the expiry date the landlord has incurred advertising costs as a result of the tenants' breach of the tenancy agreement. Therefore, the landlord's claims for advertising costs for February and March 2011 are granted.

The landlord is granted the filing fee paid for this application; however, the registered mail costs are not recoverable under the Act.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Description	Amount claimed	Amount awarded
BC Hydro January 20 – March 31, 2011	76.79	76.79
Snow shovelling	120.00	Nil
Postage	62.77	Nil
Advertising	235.91	235.91
Unpaid rent	1,100.00	1,100.00
Rent reduction for remainder of fixed term	800.00	800.00
Filing fee	<u>50.00</u>	<u>50.00</u>
	\$ 2,677.53	\$ 2,494.76

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as an Order of that court.

### Conclusion

The landlord has been provided a Monetary Order in the amount of \$2,494.76 to serve upon the tenants.

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: July 26, 2011.

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Residential Tenancy Branch