



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR; FF

### **Introduction**

This is the Landlords' application for a Monetary Order for unpaid rent and utilities; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Tenant acknowledged that he was personally served with the Notice of Hearing documents and copies of the Landlords' documentary evidence on June, 24, 2011.

The Tenant did not provide any documentary evidence.

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

- Was there a tenancy agreement between the parties?
- Are the Landlords entitled to a Monetary Order for unpaid rent and utilities?

### **Background and Evidence**

The male Landlord testified that the parties had an oral tenancy agreement which started on September 1, 2010. He stated that rent was \$1,600.00 per month, due on the first day of each month. The Landlord testified that utilities were not included in the rent.

The Landlord testified that no security deposit or pet damage deposit was required.

The Landlord testified that the Tenant did not pay rent or utilities after October's rent payment. The Landlord testified that he made a series of telephone calls to the Tenant enquiring about unpaid rent and utilities. The Landlord lives in a different location than the rental unit. He stated that he drove to the rental unit on June 6, 2011, to personally collect the rent and discovered that the Tenant had moved out of the rental unit, taking most of his possessions.

The Landlords seek a monetary award, calculated as follows:

Unpaid gas and electric utilities (October, 2010 to May 2011)	\$2,937.48
Unpaid rent for November, 2010 to May, 2011(seven months)	<u>\$11,200.00</u>
TOTAL claim	\$14,137.47

The Tenant agreed that rent was \$1,600.00 per month, but disagreed with respect to utilities. The Tenant testified that the agreement was that utilities were included until a lease was signed. The Tenant stated that no lease was signed and that he only stayed at the rental unit 8 nights. The Tenant testified that he paid the rent for the months of September and October, 2010.

The Tenant testified that another person ("M.O.") stayed at the rental unit and put his furniture there. The Tenant submitted that M.O. was the "tenant", not him.

The male Landlord testified that a co-owner of a development company introduced the Tenant to him and it was agreed that the Tenant would rent the rental unit on a month-to-month basis. The Landlord stated that it was agreed that after the Tenant completed the deal with the company, he would sign a one year lease.

The male Landlord testified that all dealings were with the Tenant and that he had no dealings with M.O.

The Tenant testified that no one was living at the rental unit after December, 2010. He stated that he tried to phone the Landlords in January and February, 2011. He stated that he could not write to the Landlords because he didn't have their address.

The male Landlord testified that he spoke to the Tenant in December and that the Tenant did not tell him that he intended on ending the tenancy in December. The Landlord stated that the Tenant had their address because he mailed the Landlords the rent cheques in September and October, 2010. The Landlord testified that he contacted the Tenant after January, 2011.

The Tenant stated "probably our intention was to move out". He stated that if this matter goes to Court, he will have witnesses and documentary evidence ready to support his claim that he was not the "tenant".

I explained to the Tenant that, should I find that there was a tenancy between the parties, I had the authority to decide the issues.

### **Analysis**

- **Was there a tenancy agreement between the parties?**

The Residential Tenancy Act defines “tenancy agreement” as follows:

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Based on the testimony of both parties, **I find that the parties had an oral month-to-month tenancy agreement** and that rent was \$1,600.00 per month, due on the first day of each month. The Tenant paid rent directly to the Landlord. There was no evidence that M.O. ever paid any rent, or was anything other than an occupant with no rights or obligations under the oral tenancy agreement.

- **Are the Landlords entitled to a Monetary Order for unpaid rent and utilities?**

The Tenant testified that utilities were included in the rent and I find that the Landlords did not provide sufficient evidence to the contrary. Therefore I dismiss the Landlords' application for unpaid utilities without leave to reapply.

Section 44 of the Act provides the only ways that a tenancy ends. Section 45 of the Act provides the ways that Tenants 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*].

Section 52 of the Act requires that a notice to end a tenancy must be in writing.

I find that the Tenant did not end the tenancy in accordance with the provisions of the Act and that the Landlords have suffered loss as a result of the Tenant's non-compliance with the Act.

The Landlords also had a duty to mitigate, or minimize, their loss under the provisions of Section 7(2) of the Act, which states:

**Liability for not complying with this Act or a tenancy agreement**

- 7** (1) 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 damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Landlords were not paid rent after October, 2010, but did not issue a 10 day notice to end the tenancy for unpaid rent, pursuant to the provisions of Section 46 of the Act. The Tenant testified that he abandoned the rental unit in December or January. The Landlords did not check the rental unit until June 6, 2011. Therefore, I find that the Landlords failed to do whatever was reasonable to minimize their loss and that they are not entitled to loss of rent for the months of February through to June, 2011. I find that the Landlords have established their claim for unpaid rent for the months of November and December, 2010 and January, 2011, in the total amount of **\$4,800.00** (\$1,600.00 x 3).

The Landlords have been partially successful in their claim and I find that they are entitled to recover half of their filing fee, in the amount of **\$50.00**.

**Conclusion**

I hereby provide the Landlords a Monetary Order in the amount of **\$4,850.00** 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: October 03, 2011.

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Residential Tenancy Branch