



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNDC, MNR, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution, the Notice of Hearing, and documents that the Landlord intends to rely upon as evidence were sent to the forwarding address provided by the Tenant, via registered mail, on September 12, 2012. The Landlord submitted Canada Post Documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent/utilities; to compensation for providing the Tenant with access to the rental unit; to retain all or part of the security deposit and to recover the filing fee for this Application for Dispute Resolution?

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on December 20, 2011; that the Tenant was required to pay rent of \$1,400.00 by the twentieth day of each month; and that the Tenant paid a security deposit of \$700.00. A tenancy agreement was submitted in evidence that corroborates this testimony. The Agent for the Landlord stated that this tenancy ended on September 05, 2012.

The Agent for the Landlord stated that the Tenant was required to pay \$700.00 in rent for the period between August 20, 2012 and September 05, 2012; that the Tenant provided a cheque, in the amount of \$700.00, for that rental period; and that the Tenant subsequently cancelled that cheque. The Landlord is seeking compensation for unpaid rent, in the amount of \$700.00.

The Landlord is seeking compensation, in the amount of \$268.80, for emergency costs. The Agent for the Landlord stated that on the evening of January 23, 2012 the Tenant was using his balcony and he locked himself out of the rental unit; that the Tenant contacted the building manager, who does not reside in the residential complex and was not in the complex at the time of this incident; that the building manager contacted a locksmith who holds the master key for the rental unit; and that the locksmith went to the rental unit to assist the Tenant.

The Landlord is seeking compensation, in the amount of \$45.00, for hydro expenses. The tenancy agreement indicates there is a "monthly cap" of \$50.00 for electricity/gas/water, and that use over this amount is the "Tenant's responsibility". The Agent for the Landlord stated that the "monthly cap" was exceeded by a total of \$45.00 for the duration of the tenancy, however no documentary evidence was submitted in support of this claim.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant has not paid \$700.00 in rent for the period between August 20, 2012 and September 05, 2012. As the Tenant is obligated to pay rent for any period he occupied the rental unit, I find that the Tenant must pay \$700.00 in rent for this period.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I can find no reason to conclude that the Tenant breached the *Act* or any term of the tenancy agreement when he contacted the Landlord and asked for assistance accessing his rental unit, nor can I find any reason to conclude that the Landlord was obligated to provide assistance to the Tenant when he locked himself out of the rental unit. As I am only able to award compensation to a Landlord when a loss is suffered as a result of the Tenant breaching the *Act* or the tenancy agreement, I dismiss the Landlord's application for compensation for the cost of a locksmith. The Landlord retains the right to seek compensation for the service provided through other means.

On the basis of the undisputed testimony, I accept that the Tenant exceeded the total "monthly cap" for utilities during the tenancy. In addition to establishing that the Tenant exceeded the "monthly cap", the Landlord must also accurately establish the precise cost of utilities before the Tenant is obligated to pay any amount for utilities. I find that the Landlord submitted insufficient evidence to show that the Tenant exceeded the utilities cap. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as the utility bills, that corroborates the testimony that the cap was exceeded. I therefore dismiss the Landlord's claim for utility costs.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$750.00, which is comprised of \$700.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$700.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$50.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: January 16, 2013

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Residential Tenancy Branch

