



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNR, MND, 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 money owed or compensation for damage or loss; for a monetary Order for unpaid rent or utilities; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant, via registered mail, on December 04, 2012. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant requested an adjournment for time to submit evidence in response to the Landlord's claims. As the Tenant has been aware of these proceedings since December of 2012, I find that the Tenant has had ample time to submit evidence. I therefore decline his request for an adjournment.

### Preliminary Matter

This tenancy was the subject of a dispute resolution proceeding on October 29, 2012, in which the Landlord claimed for compensation for unpaid rent. The Landlord was granted compensation for unpaid rent from September of 2012, in the amount of \$900.00. In this application the Landlord is seeking compensation for unpaid rent from July of 2012, in the amount of \$72.58.

The decision on October 29, 2012 was a decision and Order with respect, in part, to unpaid rent. This was a final judgment. The claim before me on October 29, 2012, as is the claim that is now before me, is for unpaid rent for the period prior to September 30, 2012. I find that the applicant, by bringing this second claim for unpaid rent, is splitting one homogenous claim for unpaid rent into two quantitative parts when the full amount of unpaid rent was recoverable on a single cause of action. I find that the claim for compensation that was heard on October 29, 2012 should have included a claim for all rent that was due prior to September 30, 2012 and I find that the Landlord is not now entitled to file another claim for unpaid rent from that time period. The claim for unpaid rent is dismissed without leave to reapply.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid utilities; compensation for damage to the rental unit; and to recover the fee for filing this Application for Dispute Resolution?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 14, 2012; that the tenancy ended on September 28, 2012; that the Tenant ended the tenancy prior to the end of the fixed term of their agreement, which was August 31, 2013; that the Tenant agreed to pay monthly rent of \$900.00 by the first day of each month; that the Tenant agreed to pay 25% of the water/sewer and hydro bill; that a condition inspection report was completed at the beginning of the tenancy; and that a condition inspection report was completed at the end of the tenancy.

The Landlord submitted a copy of a hydro bill, dated October 24, 2012, that shows electrical charges of \$390.94 were incurred between August 23, 2012 and October 23, 2012. The Landlord is seeking \$58.33, which she contends is the Tenant's share of this bill, once it is pro-rated for the days he occupied the rental unit. The Tenant stated that he has not calculated the amount owing on this bill, although he does not dispute that he should pay 25% of the pro-rated bill.

The Landlord submitted a copy of a water/sewer bill, dated November 13, 2012, that shows charges of \$318.02 were incurred between July 12, 2012 and November 13, 2012. The Landlord is seeking \$51.02, which she contends is the Tenant's share of this bill, once it is pro-rated for the days he occupied the rental unit. The Tenant stated that he has not calculated the amount owing on this bill, although he does not dispute that he should pay 25% of the pro-rated bill.

The Landlord is seeking compensation, in the amount of \$95.17, to repair the fridge. The Landlord stated that the door rail in the fridge was broken during the tenancy and the crisper was cracked during the tenancy. The Tenant stated that this damage occurred prior to the start of the tenancy.

The Landlord submitted a condition inspection report, which does not indicate that the fridge was damaged at the start or at the end of the tenancy. The Landlord stated that the damage was not noted at the end of the tenancy because the report was completed by her daughter, who is inexperienced in completing these reports. The Landlord submitted a photograph of the damages.

The Landlord stated that a salesperson from a local retailer provided her with the cost of replacing the crisper and lower rail, which was \$84.98 plus tax. She stated that salesperson wrote the amount on a piece of paper, which has been submitted in evidence. She stated that the damage has not been repaired.

The Landlord is seeking compensation, in the amount of \$47.03, for replacing a stove element. The Landlord and the Tenant agree that the element was damaged during the tenancy and that it was not replaced by the Tenant. The Landlord submitted a receipt to show that the element cost \$47.03 to replace.

The Landlord is seeking compensation for the 3.5 hours her agents spent completing, or attempting to complete, the condition inspection report at the end of the tenancy.

The Landlord is seeking compensation for the time she spent re-renting the rental unit. She stated that she spent approximately 11 hours showing the rental unit to prospective tenants and 11 hours answering emails in regards to the vacancy. She provided a list that indicates the rental unit was shown 17 times.

The Landlord is seeking compensation for fumigating the residential complex for fleas, although the complex has not yet been fumigated. She stated that she believes two of the units in the complex will need to be fumigated for fleas. She believes the units will need to be fumigated because an occupant of one of the other units believes fleas were transferred to her dog from the Tenant's dog. The Tenant stated that his dog does not have fleas.

The Landlord is seeking compensation for separating recyclable items out of the Tenant's garbage. She stated that on September 05, 2012 she went through the Tenant's garbage bags and removed beer cans and plastic food containers and placed them in the recycle bins.

### Analysis

On the basis of the undisputed evidence, I find that this tenancy began on July 14, 2012; that it ended on September 28, 2012; and that the Tenant was obligated to pay 25% of the hydro and water/sewage costs incurred during his tenancy.

As the Tenant occupied the rental unit between August 23, 2012 and September 28, 2012, which is 37 days, and the hydro bill that was submitted in evidence is for the period between August 23, 2012 and October 23, 2012, which is 62 days, I find that the Tenant is obligated to pay 25% of 37/62 of this bill. 37/62 of the hydro bill is \$233.30. 25% of \$233.30 is \$58.33. I therefore find that the Tenant must pay the Landlord \$58.33 for hydro expenses for this billing period.

As the Tenant occupied the rental unit between July 14, 2012 and September 28, 2012, which is 77 days, and the water/sewage bill that was submitted in evidence is for the period between July 12, 2012 and November 13, 2012, which is 124 days, I find that the Tenant is obligated to pay 25% of

77/124 of this bill. 77/124 of the bill is \$197.48. 25% of \$197.48 is \$49.37. I therefore find that the Tenant must pay the Landlord \$49.37 for hydro expenses for this billing period.

Section 21 of the Residential Tenancy Regulation stipulates that a report that is completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report that was completed at the start of the tenancy does not indicate the fridge was damaged, I accept that the rail on the fridge door and the fridge crisper were not broken at the start of the tenancy. I find that the Tenant's testimony that the door/crisper were damaged at the start of the tenancy is simply not sufficient to refute the report which he signed on July 14, 2012.

Although the condition inspection report that was completed at the end of the tenancy also does not note the damage to the rail on the fridge door and the fridge crisper, I find that the photographs that were submitted in evidence and the testimony of both parties clearly shows that those areas were damaged at the end of the tenancy. I find this sufficient reason to disregard the condition inspection report that was completed on September 28, 2012 in regards to the condition of the fridge.

As the evidence shows that the fridge was not damaged at the start of the tenancy and it was damaged at the end of the tenancy, I must conclude that the fridge was damaged during the tenancy. I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the damage and I find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. I am satisfied that it will cost the Landlord \$95.17 to repair the damage and I find that she is entitled to compensation in this amount.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to replace the stove element that was damaged during the tenancy. I am satisfied that the Landlord paid \$47.03 to replace the element and I find that she is entitled to compensation in this amount.

On the basis of the undisputed evidence, I find that the Landlord spent approximately 11 hours showing the rental unit. I find that this is a legitimate expense related to a premature end of the fixed term tenancy and that she is entitled to compensation for the time she spent showing the unit. I find her claim for \$15.00 per hour for her time is reasonable and I grant her compensation in the amount of \$165.00.

I find the Landlord's estimate that she spent 11 hours answering emails in regards to renting the unit to be excessive, given the amount of showings and the amount of time it takes to respond to emails. I do find that she is entitled to some compensation for the time she spent advertising the rental unit and scheduling appointments. Given my experience with these types of administrative duties, I find \$50.00 to be reasonable compensation for her time.

I find that completing a condition inspection report is an administrative cost that is typically a cost borne by the Landlord. As the Landlord would have borne this expense even if the tenancy had ended on, or after, the end of the fixed term of the tenancy, I find that the Landlord is not entitled to

compensation for these costs. I therefore dismiss the Landlord's claim for compensation for time spent completing a final condition inspection report.

I find that the Landlord submitted insufficient evidence to show that the rental unit, or any unit in the complex, needs to be fumigated for fleas. In reaching this conclusion I was heavily influenced by the absence of evidence from a professional that shows that any unit in the complex has fleas. I find that another occupant's speculation that her dog contracted fleas from the Tenant's dog, particularly when the Tenant denies his dog has fleas, is simply insufficient to conclude that any unit actually needs fumigating. I therefore dismiss the Landlord's claim for compensation for fumigating.

Section 67 of the *Act* authorizes me to compensate a landlord for losses resulting from a tenant failing to comply with the *Act* or their tenancy agreement. As there is nothing in the *Act* or the tenancy agreement that requires a tenant to recycle, I find that the Landlord is not entitled to compensation for the time she spent removing recyclable items from the Tenant's garbage.

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

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$514.90, which is comprised of \$464.90 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$514.90. 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: March 06, 2013

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Residential Tenancy Branch