



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR, MNDC, RR

For the landlord – OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant has applied to cancel the Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to reduce rent for repairs, services or facilities agreed upon but not provided. The landlords have applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the landlords advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of

Possession. The tenant also withdraws their application to cancel the Notice to End Tenancy.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords entitled to keep the tenants security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this month to month tenancy started on July 01, 2011. Rent for this unit was \$900.00 per month due on the first day of each month. The tenant paid a security deposit of \$450.00 on July 01, 2011.

The tenant testifies that the landlord misrepresented the unit when it was advertised at the start of the tenancy and on the tenancy agreement. The tenant testifies that the landlords have stated that this is a three bedroom unit when in fact it is only a two bedroom unit plus den. The den does not have a closet and cannot therefore be classed as a third bedroom. The tenant testifies that the landlords misrepresented the unit purposefully in order to get more rent. The tenant seeks to recover rent paid since the start of the tenancy to the amount of \$100.00 per month from July, 2011 to December, 2012.

The tenant testifies that the landlords informed the tenant at the start of the tenancy that the tenants Hydro would only be around \$100.00 per month. The tenant testifies that his Hydro bills have been consistently double that amount. The tenant seeks to recover the sum of \$100.00 per month for excessive Hydro from July, 2011 to December, 2012. The tenant has provided one Hydro bill in evidence for the sum of \$222.77. The tenant testifies that the other units rented by the landlords in the building have the same issues. The tenant agrees that he has not paid the full amount of rent for January and no rent for February. The tenant therefore adjusts the monetary claim to \$3,600.00 instead of the \$4,000.00 claimed on the tenant's application.

The landlord disputes the tenant's claims. The landlords testify that the unit was not misrepresented. The unit has always been rented as a three bedroom unit. The landlords testify that the third bedroom does not have a closet but does have a door and an opening window. The landlords testify that the tenant knowingly rented this unit and had inspected the unit at the start of the tenancy so the tenant would have been aware of what space the tenant was renting. The landlords testify that the tenant has never complained at this issue until the landlords served the tenant with a 10 Day Notice to End Tenancy for unpaid rent.

The landlords dispute the tenants claim for compensation or a rent reduction for high utility bills. The landlords testify that this Hydro bill is the highest bill they have seen of the tenants and in fact the bill is only for \$200.35 as \$22.42 was from a previous bill that the tenant had not paid. The landlords testify that this bill is for a period of November and December so the tenant should expect higher bills in the winter months. This bill is also for a two month period as all Hydro bills are.

The landlords testify that the electric system in the unit was been inspected and was put in up to code. The tenants unit is 1000 square feet and the tenant agreed to pay for Hydro and is responsible for his own Hydro usage. The landlords' dispute the tenants claim that all the other tenants have complained about excessive Hydro costs.

The tenant calls a witness (MD). The tenant witness is also a tenant living in a unit in the building. The tenant asks his witness if the witness has complained about Hydro and heat or if the witness knows of other tenants that have complained. The witness responds that she has complained to the landlords and has been told by other tenants that they have also complained. The tenant asks the witness about the landlords' misrepresentation of the units. The witness responds and testifies that the witness had a property manager look at the witness unit and the property manager informed the witness that in order to be a third bedroom the den has to have a closet and there is only one bathroom in the unit.

The landlords cross examines the witness and ask the witness if the witness knows if any of the previous tenants have notified the landlords off these problems with Hydro. The witness responds that she does not know, but only knows what other tenants have told the witness (names mentioned of other tenants). The landlords ask the witness if there is any proof from the property managers who looked at the witnesses unit. The witness responds that no just their telephone numbers. The landlord asks the witness if the tenant has moved into the witnesses rental unit. The witness responds that the tenant is just staying there.

The Arbitrator asks the witness if the witness has ever put her concerns about the Hydro and heat in writing to the landlords. The witness responds that no it has only been by text message and in the witness's papers when the witness filed for Dispute Resolution.

The tenant asks the witness to explain about the tenant staying in the witness unit. The witness responds that the tenant has not moved into the witness's rental unit but is staying there for two weeks to look after the witnesses cats while the witness is away.

The landlords testify that one of the other tenants mentioned by name by the witness did not move out because of any issues. Those tenants were only in residence for two weeks and moved out because they could not pay rent. They had not received a utility

bill during the two weeks they were in residence. The landlord testifies that when they went to see the tenant on March 02, 2013 the tenant informed the landlords that he was moving into the witnesses unit. The landlords state that they consider the witness to be hostile as there is a pending hearing coming up between the landlords and the witness.

The landlords seek to recover unpaid rent for January of \$110.00 and for February of \$900.00. The landlords also seek to recover unpaid rent for March of \$900.00 as the landlords testify tenant did not vacate until March 02, 2013 and the landlords are entitled to recover rent for the following month after a 10 Day Notice is given to a tenant. The landlords testify that they have advertised the unit for rent on an internet site and the newspaper. The landlords testify that they are afraid to show the unit to potential tenants at the moment as the tenant and the tenants witness are so hostile the landlords fear they may say something to potential tenants.

The landlords seek an Order to permit the landlords to keep the tenants security deposit to offset against unpaid rent.

The landlords seek a Monetary Order for damages as the landlords' claim the tenant has tampered with the electrical panel box. The tenant wired two 40 amp breakers into the box for the tenant's generator. This increased the ampage for the unit above the allowable amount. The average breakers are only 16 amps and this has created a potential risk to the landlords' property. The landlords' testify that the tenant also broke the face plate of the box when he put these amps in and the tenant had his generator wired into the box.

The landlord GN testifies that he noticed this wiring when he came to install a new washer/dryer and noticed the face panel of the box was off. The landlord testifies that he gave the tenant notice to enter and went back later to inspect the box. The landlord testifies that he told the tenant this was illegal and the tenant must not tamper with the electrical system. The landlord testifies that he spoke to an electrician who came to look at the panel box and the landlords electrician had to remove the breakers installed by

the tenant and repair the box. The landlord has provided the detailed invoice from the electrician in evidence.. The landlord testifies that the electrician did not have any other concerns about the wires although did notice that some looked as if an extra load had been put on them. If these wires had needed to be replaced the electrician would have a legal obligation to do so or report the problem.

The landlord testifies that the tenant is not an electrician and is not allowed to touch the panel box or amend it in any way. Due to the tenants tampering of the panel box it potential put the other tenants at risk along with the landlords' property.

The tenant agrees that he owes rent for January and February. The tenant disputes that the landlords are entitled to claim for rent for March as the tenant moved out on March 02, 2013. The tenant disputes that he is hostile towards the landlords and has not prevented the landlords from showing the rental unit.

The tenant disputes the landlords claim for damages to the electrical panel box. The tenant agrees he did fit two 40 amp breakers into the panel box but only with the landlords' permission. The tenant testifies that the landlords have no idea what the tenants invention is or how much power it consumes. The breaker size is irrelevant and it is only power that is drawn that could overload the system not the size of the breakers fitted. If too much power is drawn then it would trip the main breaker in the box located downstairs. The tenant testifies that his generator invention is only 3.9 amps and could not overload the breakers. The second 40 amp breaker the tenant fitted as not connected and only used as a backup. The tenant testifies that he informed the landlord what he was doing when working on his invention and that he had to wire something into the panel box.

The tenant testifies the landlords had given the tenant access to the main panel box as the tenant was in conflict with BC Hydro and the tenant had to read his meter. The landlord EW came over and unlocked the panel box asking the tenant to lock it when the tenant had finished. The tenant testifies that he had a friend check out the panel box

and the breaker was shut off with no power going to it. Therefore it was not a fire hazard. The tenant testifies that the burnt out wires shown in the tenant's photographic evidence were there and the landlord did nothing about them. The tenant testifies that the tenants unit was not up to code with regards to the electrical system and the tenant had problems with the electrics that affected the tenants fax machine, the stereo, the television and microwave. The tenant testifies that he worked as a construction safety office on sites working with professional trades and the tenant states he is aware of safety issues and hazards.

The tenant testifies that he has invented a multimillion dollar machine and did not want anyone to go into the unit to put the breakers in so he did this work himself.

The landlord cross examines the tenant and asks the tenant why he moved into the unit if there were problems he was aware of from the previous tenant. The tenant responds that he moved in because he thought the unit had been upgraded by the previous tenant. The landlord asks the tenant why he thought a single mother could upgrade the electrical system in a unit. The tenant responds that the previous tenant had told him that she had upgraded the unit. The landlord testifies that the previous tenant had painted the unit to return it to its original condition at the end of that tenancy.

The landlord testifies that they are not neglectful landlords. Whenever they receive a complaint from a tenant the landlords send in the correct trade's person to remedy any issues. The landlords dispute that the tenant made the landlords aware of any work he was doing to the electrical panel and testify that they would never give a tenant permission to alter an electrical panel. The tenant had only told the landlords that he was having problems with BC Hydro. The landlords' testify that the tenant would not give the landlords a name of an electrician that the tenant said he had spoken to and that that electrician had told the tenant he had wired everything in correctly.

### Analysis

With regard to the tenant's application for money owed or compensation for damage or loss; I have considered the parties testimony in this matter and the documentary evidence before me. In the matter of the tenants claim for compensation because the tenants states the landlords misrepresented the rental unit and it is only a two bedroom unit with a den not a three bedroom unit. At the start of a tenancy a tenant is required to inspect a rental unit with the landlords. I find the parties agree that the tenant did inspect the unit at that time and I therefore find that if the tenant had concerns about this unit being only a two bedroom unit with a den then the tenant should have mentioned it at that time and had the option of either not renting or asking for a rent reduction. A tenant cannot come back 19 months later at the end of the tenancy and attempt to recover a portion of rent. Therefore the tenants claim for a rent reduction or compensation is dismissed without leave to reapply.

With regards to the tenants claim for compensation or a rent reduction because the tenants Hydro bills were too high; Hydro bills are based on a two month period. When a tenant has the Hydro in the tenants name the tenant is responsible for the Hydro. I am not satisfied with the tenants claim that these bills are twice what the landlord quoted as the bill provided in evidence is exactly the amount quoted of \$100.00 per month as the bill of \$200.35 is for a two month period. No other bills have been provided in evidence from the tenant and the tenant is responsible for their own consumption. Therefore this section of the tenant's claim is dismissed without leave to reapply.

With regards to the tenants claim that there were problems in the unit with the electrical system at caused problems to the tenant's appliances. The tenant has provided insufficient evidence to support this claim and I find the tenants witness is potentially hostile as the witness has a pending claim against the landlords. This section of the tenants claim is therefore dismissed.



With regards to the landlords claim for unpaid rent; I am satisfied form the undisputed testimony before me that the tenant owes rent of \$110.00 for January, 2013 and \$900.00 for February, 2013. The landlords seek to amend their claim for unpaid rent to include March as the tenant was still living in the rental unit on March 01, 2013. I refer the parties to the Residential Tenancy Policy Guidelines #3 which states;

*In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.*

Therefore I find the landlords are also entitled to recover a loss of rent for March and I will allow the landlords to amend their application to include this. However as we are still at the beginning stage of March I find the landlords award will be limited to half a month's rent as there is still the possibility that the rental unit can be rented for a period of March as the landlords have placed advertisements for the unit. Therefore the landlords will receive a monetary award for the amount of **\$1,460.00** pursuant to s. 67 of the *Act*. This sum is comprised of \$110.00 for January, \$900.00 for February and \$450.00 for March. If the unit is not re-rented for the remainder of March the landlords are at liberty to file a new application to recover the balance of rent for March of.\$450.00.

I order the landlords to retain the tenants security deposit of **\$450.00** pursuant to s. 38(4)(b) of the *Act*. This sum will be offset against the unpaid rent.

With regard to the landlords claim for \$132.10 for damage to the electrical panel; the onus is on the landlord to prove a 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;

3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

Having considered the evidence and testimony before me I am satisfied that the landlords have met the test for damages. The parties agree that the tenant did fit 40 amp breakers into the panel box. The landlord has shown that in doing so the tenant caused damage to the panel and box cover. The landlords have also shown the cost to replace the damaged parts and remove the breakers. A tenant is not entitled to tamper with the electrical system without written authorisation from a landlord and without a relevant certificate showing that the tenant is qualified to make any changes to an electrical system. I therefore uphold the landlords claim for damages and award the landlord the amount of **\$132.10** pursuant to s. 67 of the *Act*.

As the landlords have been successful with their claim I find the landlords are entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*.

A Monetary Order has been issued to the landlords for the following sum:

Unpaid rent and loss of rent	\$1,460.00
Damages	\$132.10
Filing fee	\$50.00
Subtotal	\$1,642.10
Less security deposit	\$450.00
Total amount due to the landlords	\$1,192.10

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,192.10**. The order must be

served on the respondent 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: March 05, 2013

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Residential Tenancy Branch

