



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND and FF

### Introduction

This is the fifth proceeding on this application for reasons set out in my Interim Decision of January 25, 2013.

In part, the most recent adjournment took into account that this application by the landlords is correlated with an application before the Employment Standards Branch on the tenant's application.

While it had been anticipated that part of the present claims would be clarified by the ESB decision, that hearing had been postponed to a later date. The overlapping issue was settled during the present hearing, while some matters unrelated to the rental component will proceed before the ESB tribunal.

As a matter of note, the tenant's legal counsel who participated briefly in the present hearing is his representative on the other matter and was simply consulted with respect to a proposed settlement agreement in the present hearing.

While the original application had included a request for an Order of Possession, the tenant's departure from the rental unit rendered that claim moot.

### Issues to be Decided

The present hearing was left to consider a number of outstanding monetary claims by the landlords, summarized by their legal counsel as follows:

- Rent and utilities collected as wages and under dispute - \$3,897
- Unpaid rent for August 2012 - \$500;
- Unpaid utilities for August 2012 – \$57.43
- Loss of use - \$1,200
- Damage in clean up and removal of horse corrals - \$1,100.

### Background and Evidence

This tenancy began in mid May of 2007 as part of an employment agreement at no charge for the first summer. Thereafter, the tenant paid \$500 rent per month plus half of the utilities shared with a commercial building on the property. The rent and utilities were paid by deduction from the tenant's pay for each month.

As a matter of note, the present landlord's took over operation of the property in June of 2011 and continued the employment/tenancy agreement with the tenant.

The employment agreement ended in July of 2012 and the tenancy ended on August 31, 2012.

As there was some dispute with respect to the employment agreement, the tenant had made application for adjudication with the Employment Standards Branch. As that branch limits claims to six months preceding, the tenant included a claim for return of rent and utilities for that period in the amount of \$3,897. The same amount is claimed in the present application by the landlord as rent in the event it was ordered returned to the tenant by the ESB proceeding.

### Settlement Agreement

Taking the offsetting claims into account, the parties crafted the following consent agreement during the hearing:

1. The landlords agree to withdraw the \$3,897 claim from the present application and the tenant agrees to withdraw his identical claim from the ESB proceeding;
2. The tenant remains at liberty to proceed with the balance of his ESB claim;

3. The landlords agree to withdraw their \$1,200 claim for compensation for loss of use and their \$1,000 claim for clean up and removal of corrals.
4. The parties agree that the remaining claims for unpaid rent and utilities for August 2012 will be referred to the present arbitrator for adjudication.

As to the claim for rent and utilities for August 2013, the dispute hinges on the tenant's belief that rent deducted from wages at the turn of the month applied to the following month.

The landlords gave evidence that it had been their belief that wages were paid for the previous month and the rent/utilities deductions taken from wages applied to the previous month for which the wages were paid.

They stated that the pattern had been confirmed in June 2011 when they took over the property and the previous owner had advised them that the June rent was theirs to collect by deduction from the wages paid at the end of June.

The original landlord attended the hearing and gave evidence confirming the landlords' version. He stated that it had always been his practice to apply the deduction for rent and utilities to previous month, the month in which the wages had been earned.

### Analysis

In view of the corroboration of the previous landlord, I find that the landlords' version is the correct one.

Accordingly, I find that the landlords are entitled to a Monetary Order for \$500 rent and \$57.43 in utilities for August 2012.

### Conclusion

By consent agreement, the landlords withdrew all claims except for rent and utilities for August 2013 on the tenant's undertaking that he would withdraw his claim before the Employment Standards Branch for \$3,897 for return of six months' rent and utilities paid by wage deduction. The tenant's other claims before that branch are unaffected.

By decision, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$557.43, for service on the tenant.

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: April 5, 2013

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Residential Tenancy Branch