



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEAK PROPERTY MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, MNR, MNSD, MNDC, FF

### Introduction

This hearing was originally scheduled for March 19, 2013 to deal with cross applications. At the originally scheduled hearing both parties appeared. The hearing was adjourned and I issued an Interim Decision that contained findings and instructions with respect to service of hearing documents. The Interim Decision should be read in conjunction with this decision.

Notices of Adjourned Hearing were sent to both parties at their current addresses for a hearing set for 11:00 a.m. on April 18, 2013. Although a substantial evidence package was received from the tenant, the tenant did not appear at the reconvened hearing despite leaving the teleconference call open until 11:11 a.m. The landlord confirmed that on March 25, 2013 both parties served their respective hearing packages upon each other, in person, at the rental unit. The landlord also confirmed that they had been prepared to deal with the tenant's application during the reconvened hearing.

I was satisfied that the parties complied with the instructions I gave them with respect to serving their documents upon each other. Since the tenant did not appear at the reconvened hearing and the landlord was prepared to deal with the tenant's application during this time, I dismissed her application without leave. I continued to hear from the landlord with respect to their application.

### Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent and utilities, late fees, and NSF fees from the tenant?
2. Is the landlord entitled to retain the tenant's security deposit and pet deposit?

### Background and Evidence

The one year fixed term tenancy commenced May 1, 2012 and the tenant paid a security deposit and pet deposit totalling \$675.00. The monthly rent of \$675.00 was payable on the 1<sup>st</sup> day of every month. The tenancy agreement provides that late payment of rent and/or cheques returned NSF will be subject to fees of \$25.00 each. The tenant was required to pay some utilities under the tenancy agreement, including: 40% of gas and electricity bills. The tenant returned vacant possession of the rental unit to the landlord on March 25, 2013.

The landlord is seeking to recover the following amounts from the tenant, as reduced during the hearing:

#### Unpaid rent: March 2013 –

The tenant withheld rent for March 2013 on the basis she had paid for emergency repairs. The landlord was of the position the tenant did not meet the criteria to deducting emergency repair costs from rent. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 6, 2013; however, the tenant did not pay the outstanding rent.

#### Loss of rent: April 2013 –

The tenant returned vacant possession of the rental unit on March 25, 2013 and the landlord has been advertising the rental unit for rent but has been unsuccessful in finding a replacement tenant. The landlord is seeking to recover the rent owed by the tenant under her fixed term tenancy agreement.

#### Late fees and NSF fees –

The landlord is seeking to recover late fees for rent not being paid when due for the months of December 2012 and March 2013. In addition, the tenant's rent cheque dated December 28, 2012 was returned NSF. The landlord is seeking a total of \$75.00 for these three events.

#### Utilities –

The landlord submitted that the gas and electricity bills are in the name of the upper tenants. The upper tenants provide the tenant with copies of the utility bills and the tenant would ordinarily pay her portion to the upper tenants. In filing this application, the tenant owed the upper tenants \$268.60 for her portion of gas and electricity bills; however, the landlord has confirmed that the tenant has since paid those bills to the upper tenants. Subsequent to filing this Application for Dispute Resolution, the upper tenants received a bill from BC Hydro for the period of January 15, 2013 – March 13,

2013 for which the tenant owes \$102.22. The landlord is seeking to amend the claim to reflect this lesser amount owed by the tenant.

#### Cleaning –

This portion of the landlord's original claim was withdrawn during the hearing as the landlord stated the tenant left the unit reasonably clean as required by the Act.

In support of the landlord's claims against the tenant, documentary evidence provided to me included copies of: the tenancy agreement; the returned cheque of December 28, 2012; the 10 Day Notice to End Tenancy for Unpaid Rent dated March 6, 2013; and, numerous email correspondence between the parties concerning payment of utilities, rent, emergency repair requirements, sub-letting the unit, among other things.

#### Analysis

Under the Act, a tenant is required to pay rent when due under the terms of their tenancy agreement unless the tenant has a legal right to withhold rent. In this case, the tenant withheld rent for March 2013 on the premise she paid for emergency repairs. A tenant may be entitled to withhold rent where the tenant pays for emergency repairs; however, the tenant must be able to demonstrate that they fulfilled all of the criteria under section 33 of the Act in order to establish such an entitlement. Given the parties were in dispute as to whether the tenant satisfied the criteria of section 33 of the Act and the tenant's failure to appear at the hearing, I find I am unsatisfied the tenant had a legal right to withhold rent for March 2013. Therefore, I grant the landlord's request to recover unpaid rent for March 2013.

Where a tenant has a fixed term tenancy the tenant may remain obligated to compensate the landlord for loss of rent for the remainder of the fixed term, provided the landlord has made reasonable efforts to mitigate the loss of rent. Based upon discussions made during the original hearing of March 19, 2013 I am satisfied that the tenant had previously communicated to the landlord that she would retain possession of the unit until May 1, 2013 and that after the hearing of March 19, 2013 the tenant agreed to give up possession sooner in an effort to minimize potential loss of rent for the month of April 2013. Unfortunately, the unit was not re-rented for April 2013 and I accept the landlord's undisputed testimony that reasonable efforts have been made to re-rent the unit. I also accept that it is reasonable that the unit was not re-rented in April 2013 due to the short notice of her intention to return possession at the end of March 2013.

Upon review of the tenancy agreement, I find the provision of the tenancy agreement that permits the landlord to charge late fees and NSF fees is compliant with the Residential Tenancy Regulations. I find the landlord has provided sufficient evidence to establish the tenant failed to pay rent for December 2012 and March 2013 when due and gave a cheque to the landlord that was returned for insufficient funds. Therefore, I grant the landlord's requests for late fees and NSF fees in the amount of \$75.00, as requested.

Upon review of the tenancy agreement, I accept that the tenant is required to pay 40% of gas and electricity bills. I accept the landlord's undisputed testimony that the tenant paid the bills previously sought by way of this application. I also find it reasonable that another bill was received since this application was filed. I find the landlord's request to recover the reduced amount of \$102.22 for hydro owed for January 15 – March 13, 2013 is reasonable and I grant that request. Although the landlord is of the belief the tenant has been provided a copy of the most recent bill, should the tenant request a copy of that bill the landlord shall remain obligated to provide a copy to her.

I authorize the landlord to retain the tenant's security deposit and pet deposit in partial satisfaction of the amounts awarded to the landlord. I also award the filing fee to the landlord.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent: March 2013	\$ 675.00
Loss of rent: April 2013	675.00
Late fees and NSF fee	75.00
Utilities (hydro for January 15 – March 13, 2013)	102.22
Filing fee	50.00
Less: security deposit and pet deposit	<u>(675.00)</u>
Monetary Order	\$ 902.22

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The tenant's application was dismissed. The landlord has been authorized to retain the tenant's security deposit and pet deposit and has been provided a Monetary Order for the balance of \$902.22 to serve and enforce as necessary.

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 18, 2013

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Residential Tenancy Branch

