



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the landlord: MNR, MNSD, MNDC, FF  
For the tenant: MNSD, OLC, FF

### **Introduction**

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid utilities and for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenant applied for a return of their security deposit, doubled, for an order requiring the landlord to comply with the Act, and for recovery of the filing fee.

Although not listed on the tenancy agreement as a tenant, the attending tenant said that she resided in the rental unit with the tenant.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the evidence was discussed and neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### **Issue(s) to be Decided**

1. Is the landlord entitled to monetary compensation and to recover the filing fee?
2. Is the tenant entitled to monetary compensation, including his security deposit returned, doubled the amount, and to recover the filing fee?

### Background and Evidence

The parties have been in dispute resolution at least three other times. The results of one of the hearings found that the tenant was responsible for paying 70% of the hydro and gas usage for the residential property, as the tenants resided in the lower suite and no one living in the upper suite.

The undisputed evidence at this hearing shows that this tenancy began on January 15, 2012, ended on January 18, 2013, monthly rent was \$1200, and the tenant paid a security deposit of \$600 at the beginning of the tenancy.

There was evidence that the tenancy ended as the result of a 10 Day Notice to End Tenancy for Unpaid Rent, with an effective move-out date of January 18, 2013, delivered to the tenant as the tenant chose not to dispute the Notice.

*Landlord's application*-The landlord has applied to retain \$324.29 from the tenant's security deposit, due to his claim that the tenant owes that amount for unpaid hydro and gas charges, for a period ending on January 31, 2013.

The landlord submitted copies of the hydro and gas bills, and the billing statements to the tenant.

In response, the tenant agreed that the tenant owed for hydro and gas bills, but only in the amount of \$252.24, as some of the billing extended to the end of January 2013.

The tenant contended that they were not responsible for any period beyond January 18, as they vacated the rental unit on that day, and due to the landlord's contractor beginning demolition of the rental unit walls on January 20. The tenant said that she called the contractor and confirmed this date and that she observed the work in progress.

The landlord's agent said that he could not confirm or deny the tenant's statements as he has not represented the landlord since the end of this tenancy.

*Tenant's application*-The tenant is claiming monetary compensation in the amount of \$1200, which is their security deposit of \$600, doubled, as the landlord lost the right to claim the security deposit due to having no condition inspection reports.

In response to my question, the tenant said the landlord was provided the tenant's written forwarding address on February 6, 2013, in an email transmission, as this was the parties' usual method of communication. In support of this contention, the tenant said the landlord transmitted the utility billing statements in this manner.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

*Landlord's application*-I find the evidence supports that the tenant's obligation to pay hydro and gas usage for this rental unit ended on January 18, 2013, the last day of the tenancy. I also accept the tenant's undisputed version of events that the landlord began demolition or renovation in the rental unit immediately after this tenancy ended.

I am unable to determine from the landlord's written submissions the total amount owed by the tenant through the period of January 18 as I find the bills were unclear of the exact billing dates or a breakdown of a daily rate from which I could calculate the amount owed through January 18.

I therefore accept the tenant's admission of liability and find that the landlord is entitled to a monetary award in the amount of \$252.24.

*Tenant's application*- When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished under section 36 of the Act. In this case, the landlord applied to keep the security deposit in compensation of monetary claims for unpaid utilities. As the landlord's claim was not for damage to the property but for unpaid utilities, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit within 15 days of receiving the tenant's forwarding address, sent on February 6, 2013. The tenant is therefore not entitled to double recovery of the deposit, and I dismiss that portion of the tenant's application.

I find that both applications contained some merit and I therefore do not award either party recovery of the filing fee.

Due to the above, I find the landlord is entitled to a monetary award of \$252.24 for unpaid utilities.

I allow the landlord to retain the amount of \$252.24 from the tenant's security deposit of \$600 in satisfaction of his monetary award.

I order the landlord to return the balance of the tenant's security deposit \$347.76. As such, I grant the tenant a monetary order in the amount of \$347.76, under authority of Section 67 of the Act, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recoverable from the landlord.

### Conclusion

The landlord has proven a total monetary claim of \$252.24, which he is directed to retain from the tenant's security deposit of \$600.

The landlord is ordered to return the balance and the tenant is granted a monetary order for the balance due remaining from his security deposit, in the amount of \$347.76.

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* and is being mailed to both the applicant and the respondent.

Dated: May 14, 2013

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Residential Tenancy Branch