



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR; MNDC; FF, O

### **Introduction**

On April 5, 2013, the Landlord filed her Application seeking a Monetary Order for unpaid rent and utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; to recover the cost of the filing fee from the Tenant; and for “other” relief. The Landlord’s Application was scheduled to be heard on April 18, 2013, as a cross application to an application made by the Tenant.

At the outset of the April 18, 2013 Hearing, it was determined that the Tenant had not yet picked up the Landlord’s Notice of Hearing documents that were sent by registered mail. He stated that he has been working out of town and therefore has not seen the Canada Post Notice advising that the documents are ready for pickup. I gave the Tenant the information with respect to where they could be picked up and cautioned the Tenant to do so.

The Tenant’s application was heard and a decision reached on April 19, 2013. I adjourned the Landlord’s Application in order to allow the Tenant to pick up the documents from the postal outlet.

This is the reconvened Hearing for the Landlord’s Application.

The parties gave affirmed testimony at the Hearing.

The Tenant acknowledged receipt of the Landlord’s Application and documentary evidence.

### **Preliminary Matter**

The Landlord’s Application for Dispute Resolution indicates that she is seeking “other” relief; however, she did not provide sufficient details on her Application for Dispute Resolution with respect to what other relief she is seeking. When a party seeks “other” relief, the Application for Dispute Resolution requires the Applicant to provide details in

the “Details of Dispute Resolution” section. No details were provided. Therefore this portion of the Landlord’s application is dismissed.

### **Issues to be Decided**

- Is the Landlord entitled to a monetary award for unpaid rent and utilities?
- Is the Landlord entitled to compensation pursuant to the provisions of Section 7 of the Act?

### **Background and Evidence**

This is the 4<sup>th</sup> hearing between the parties since January 11, 2013.

On January 11, 2013, the hearing was with respect to the Landlord’s application for an order of possession and monetary order for unpaid rent and utilities. On January 14, 2013, the Arbitrator issued his Decision. The Arbitrator found that the tenancy had ended on December 7, 2012, pursuant to the Notice to End Tenancy and therefore the Landlord’s application for an order of possession was dismissed. The Landlord was provided with a monetary order in the amount of \$2,400.00 for unpaid rent, and was granted leave to re-apply for unpaid utilities. On January 29, 2013, the Landlord filed an Application for Review Consideration which was dismissed.

On February 8, 2013, the hearing was with respect to the Tenant’s application for a monetary award in the total amount of \$25,000.00 and an order that the Landlord return his personal property. The Arbitrator provided the Tenant with a monetary order in the amount of \$1,500.00. The Arbitrator explained that the Tenant now owes the Landlord \$900.00, after setting off the Tenant’s award against the outstanding amount the Tenant still owed the Landlord towards rent arrears. The Arbitrator gave the Tenant leave to reapply for compensation for lost income and property which may have been lost or destroyed by the Landlord. The Arbitrator cautioned the Tenant that he would require “strict proof of such items to be successful”.

On February 8, 2013, the Arbitrator also gave orders that the Landlord provide the Tenant with unobstructed access on certain dates for the purposes of retrieving his boat and dismantling and removing his shed from the Landlord’s property, as follows:

1. February 9, 2013 between the hours of 11:00 a.m. and 1:00 p.m. to remove his boat and other property from the shed and the side of the house; and
2. February 16, 2013 between the hours of 8:00 a.m. and 5:00 p.m. to dismantle and remove shed.

On March 13, the hearing was with respect to the Tenant's application for an Order that the Landlord comply with the Act and return his personal property and for compensation in the amount of \$5,000.00 for damage or loss. This hearing was not completed within the allotted time, and was adjourned to April 18, 2013. In the meantime, the Landlord filed a cross application, which is the subject of this Hearing. The Tenant's application for a monetary award was dismissed without leave to reapply. Two Orders were made:

1. that the Landlord provide the Tenant with unobstructed access to the rental property between the hours of 9:00 a.m. and 1:00 p.m., April 20, 2013, for the purposes of removing his possessions, ; and
2. if the Tenant does not complete the removal within the 4 hours allotted, the Landlord may dispose of the remains pursuant to the provisions of Part 5 of the regulation.

The parties agreed that the Tenant was able to collect his remaining possessions within 2 hours of the time allotted.

The Landlord's agent ("DR") gave the following testimony:

DR stated that the original order made on January 11, 2013, for unpaid rent was made as a result of deceit on the Tenant's part. DR stated that the Tenant actually owes \$4,800.00 in unpaid rent, rather than the \$900.00 as ordered by the Arbitrator. DR said that the Tenant has not paid the \$900.00 and therefore the Landlord is seeking a monetary award in the amount of \$900.00 for unpaid rent.

DR stated that the Tenant was supposed to pay 20% of the shared utilities, but he has not paid his fair share. DR submitted copies of invoices for gas and hydro bills in evidence, and stated that the Tenant's share of these bills total \$1,079.92 for gas and \$428.15 for hydro, totaling \$1,508.07 calculated as follows:

Gas bills	\$5,399.62
Hydro bills	<u>\$2,140.77</u>
Subtotal	\$7,540.39
Tenant's share	<u>x 20%</u>
TOTAL	\$1,508.07

The Landlord also seeks the cost of serving the Tenant by registered mail on two other files for in the total amount of \$67.26. The Landlord provided copies of the receipts for this cost in evidence.

DR submitted that the Tenant has constantly disturbed and taunted the Landlord since he was evicted in December, 2012; has wasted the Landlord's time by refusing to pick up registered documents, causing adjournments; and harassed the Landlord by deliberately taking too long to remove his shed and belongings from the rental property. The Landlord seeks compensation in the amount of \$2,000.00.

The Tenant gave the following testimony:

The Tenant stated that one of the gas bills was for the period between November 22, 2012 and December 21, 2012. He stated that he was illegally evicted on December 7, and therefore should only be liable for a portion of that bill. He stated that he paid his share of the hydro up to and including the bill for the period between March 23 and April 24, 2012. The Tenant stated that he did not pay his share after that period because the Landlord would not provide him with copies of the bills. He stated that the Landlord did not give him copies of the bills until he was picking up his belongings. The Tenant stated that the Landlord did not provide receipts for payments that he made towards rent or utilities.

Likewise, the Tenant stated that he paid for his share of the hydro bills up to and including March 23, 2012. He acknowledged that he owes the Landlord for his share of the remaining months, in the amounts claimed by the Landlord.

The Landlord's agent ("DR") gave the following reply:

DR denied that the Tenant paid any share of the utilities since the end of November, 2011. He stated that the Landlord had kept records of what was paid and that he could provide them, if necessary.

**Analysis**

The Landlord's request for a monetary award in the amount of \$900.00 is dismissed as this matter has already been decided. The Landlord's remedy is to file her \$2,400.00 Monetary Order in Small Claims. The Tenant may also file his \$1,500.00 Monetary Order in Small Claims. As stated in the Decision of February 8, 2013, after set-off, the Tenant owes the Landlord \$900.00 for unpaid rent.

DR did not provide any explanation for why the Landlord waited more than a year before filing an application for unpaid utilities. DR stated that the Landlord had records of payments made by the Tenant. However, the January 14, 2013 Decision states, in part, in the "Background and Evidence" section: "The landlord has not kept any record of payments and has not issued receipts for cash payments received from the tenant,

contrary to section 26(2) of the *Residential Tenancy Act*.” In the absence of such records, and on the dispute of the Tenant, I find that the Landlord has not provided sufficient evidence that the Tenant owes the amount sought for unpaid utilities.

However, the Tenant agrees that he still owes some utilities to the Landlord. Therefore, based on the Tenant’s acknowledgement of the utilities owed, I find that the Landlord has established a monetary award for unpaid utilities, calculated as follows:

Gas April 24 – May 24, 2012 ( $\$357.81 \times 20\%$ )	\$71.56
Gas May 24 – June 21, 2012 ( $\$203.96 \times 20\%$ )	\$40.79
Gas June 21 – July 24, 2012 ( $\$210.93 \times 20\%$ )	\$42.19
Gas July 24 – August 22, 2012 ( $\$144.70 \times 20\%$ )	\$29.94
Gas August 22 – September 24, 2012 ( $\$256.21 \times 20\%$ )	\$51.24
Gas September 24 – October 23, 2012 ( $\$280.82 \times 20\%$ )	\$56.16
Gas October 23 – November 22, 2012 ( $\$401.08 \times 20\%$ )	\$80.22
Gas November 22 – December 7, 2012 (15 days/30 days)	\$16.75
Pro-rated $\$167.49 \times 15/30 = \$83.75$ ( $\$83.75 \times 20\%$ )	
Hydro May 24, 2012 ( $\$280.40 \times 20\%$ )	\$56.08
Hydro July 24, 2012 ( $\$278.78 \times 20\%$ )	\$55.76
Hydro September 24, 2012 ( $\$285.16 \times 20\%$ )	\$57.03
Hydro November 23, 2012 ( $\$343.87 \times 20\%$ )	<u>\$68.77</u>
TOTAL award to the Landlord for unpaid utilities	<b>\$626.49</b>

I dismiss the Landlord’s application for recovery of the cost of serving the Tenant, as there is no provision in the Act for either party to recover the cost of serving the other.

I dismiss the Landlord’s application for compensation for aggravation and harassment. Section 7 of the Act states:

**7** (1) If a landlord or tenant does not comply with this **Act, the regulations or their tenancy agreement**, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

(emphasis added)

I accept that the Landlord and Tenant have a poisoned relationship. However, I find that the Landlord did not provide sufficient evidence that the Tenant breached the Act, regulations or tenancy agreement.

The Landlord has been partially successful in her application, and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

### **Conclusion**

I hereby provide the Landlord a Monetary Order in the amount of **\$676.49** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and may be 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: May 28, 2013

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Residential Tenancy Branch