



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlords: OPR MNR MNSD MNSD FF

For the tenants: MT CNR

### 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 landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, authorization to keep all or part of the security deposit and pet damage deposit, and to recover the filing fee.

The tenants applied for more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), to cancel a 10 Day Notice, and to recover the filing fee.

Landlord “PL” attended the hearing. The tenants did not attend the hearing. As the tenants did not attend the hearing, the tenants’ application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlords’ application.

The hearing process was explained to the landlord PL, and the landlord was given an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The landlord testified that their application and evidence was served on the tenants by “Xpresspost” on January 30, 2014. Based on the undisputed testimony of the landlord, I find the tenants were sufficiently served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Although the tenants' application was dismissed during the hearing, I find the landlords' 10 Day Notice was not completed in accordance with section 52 of the *Act*, as the landlords failed to include an effective vacancy date and the address of the rental unit, and as a result, is **cancelled**. Given the above, an order of possession was not granted to the landlords. The landlords may issue the tenants a new 10 Day Notice, which must comply with section 52 of the *Act* to be effective. I will, however, consider the landlords' application for monetary compensation and to retain the tenants' security deposit and pet damage deposit towards unpaid rent.

The landlord attempted to claim for heating oil during the hearing. The landlords were not permitted to add that to their claim as the landlords failed to describe heating oil in their application. As a result, the landlords are at liberty to reapply for heating oil compensation as that matter has not been considered in this proceeding.

### Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

A fixed term tenancy began on December 1, 2013, and is scheduled to expire on November 30, 2014. Monthly rent in the amount of \$900.00 is due on the first day of each month. The tenants paid a security deposit of \$440.00, although the landlords requested \$450.00; however failed to pay the remaining \$10.00, according to landlord. The tenants paid a pet damage deposit of \$200.00, and the landlords continue to hold both deposits.

During the hearing, landlord PL reduced the landlords' original monetary claim of \$2,272.76 to \$1,972.72, comprised of the following:

Item 1	Unpaid rent for January 2014	\$900.00
Item 2	Unpaid rent for February 2014	\$900.00
Item 3	Unpaid hydro utilities	\$93.56
Item 4	Unpaid water utilities	\$79.16
	<b>TOTAL</b>	<b>\$1,972.72</b>

### Items 1 and 2

The landlords submitted a copy of a 10 Day Notice in evidence. The landlord testified that the tenants remain in the rental unit, and have failed to pay January 2014 rent of

\$900.00 and February 2014 rent of \$900.00. The 10 Day Notice was dated January 10, 2014 and indicates that the tenants owed \$910.00 in rent as of January 1, 2014, plus \$280.00 in utilities.

The tenants' applied to dispute the 10 Day Notice; however, failed to attend the hearing today to present the merits of their application, which resulted in their application being dismissed without leave to reapply.

#### Items 3 and 4

The landlords are claiming \$93.56 for unpaid hydro utilities comprised of 40% of the total hydro bill which was \$233.94. The landlords submitted a copy of the hydro bill in the amount of \$233.94 and the landlord stated that 40% of that amount is \$93.56. The tenancy agreement submitted in evidence by the landlords indicates that the tenants will be responsible for 40% of utilities, and the tenancy agreement does not include electricity in the monthly rent.

The landlords are also claiming \$79.16 for unpaid water utilities comprised of 40% of the total water bill which was \$197.92. The landlords submitted a document supporting that the total water bill was \$197.92, and the landlord stated that 40% of that amount is \$79.16. The tenancy agreement submitted in evidence by the landlords indicates that the tenants will be responsible for 40% of utilities, and the tenancy agreement does not include water in the monthly rent.

#### Analysis

Based on the undisputed testimony of the landlord and the documentary evidence before me, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Items 1 and 2** – The landlord testified that the tenants remain in the rental unit, and have failed to pay January 2014 rent of \$900.00 and February 2014 rent of \$900.00. Section 26 of the *Act* requires that tenants pay rent when it is due in accordance with

the tenancy agreement, whether or not the landlords comply with the *Act*. Therefore, I find the tenants breached section 26 of the *Act* by failing to pay \$900.00 rent for January 2014 and \$900.00 rent for February 2014. Therefore, I find the landlords have met the burden of proof and are entitled to **\$1,800.00** in compensation for unpaid rent for these portions of their claim.

**Items 3 and 4** – I find the documentary evidence supports the undisputed testimony of the landlord that the tenants failed to pay their 40% share of the hydro and water bills. I find that 40% of the total hydro bill of \$233.94 is actually \$93.58, which is two cents higher than what is being claimed by the landlords. I find that 40% of the total water bill of \$197.92 is actually \$79.17, which is one cent higher than what is being claimed by the landlords. Therefore, based on the undisputed testimony of the landlord and the document evidence submitted, I find the landlords have met the burden of proof and are entitled to **\$93.58** for unpaid hydro utilities, and **\$79.17** for unpaid water utilities, as neither of those utilities is included in the monthly rent.

The landlords continue to hold the tenants' security deposit of \$440.00 and pet damage deposit of \$200.00, which have not accrued interest since the start of the tenancy. As the landlords' claim had merit, I **grant** the landlords the recovery of their **\$50.00** filing fee.

I **find** that the landlords have established a total monetary claim of **\$2,022.75** as follows:

Item 1	Unpaid rent for January 2014	\$900.00
Item 2	Unpaid rent for February 2014	\$900.00
Item 3	Unpaid hydro utilities	\$93.58
Item 4	Unpaid water utilities	\$79.17
Item 5	Recovery of filing fee	\$50.00
	<b>TOTAL</b>	<b>\$2,022.75</b>

I **ORDER** the landlords to retain the tenants' full security deposit of \$440.00 and full pet damage deposit of \$200.00 in partial satisfaction of the landlords' monetary claim. I **grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$1,382.75**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenants' application was dismissed in full, without leave to reapply.

The landlords have established a total monetary claim of \$2,022.75 and have been ordered to retain the tenants' full security deposit of \$440.00 and full pet damage deposit of \$200.00 in partial satisfaction of the landlords' monetary claim.

The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$1,382.75. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 7, 2014

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Residential Tenancy Branch

