



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Devito Construction Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenants – CNR, CNC

For the landlords – OPR, OPC, MNR, FF, O

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a One Month Notice to End Tenancy for cause and a 10 Day Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent or utilities; an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

The tenants and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the applications for an Order of Possession. The tenants withdrew their application to cancel the Notices to End Tenancy.

### Preliminary Issues

The tenants amended their application on March 20, 2014. However this amended application was sent to the landlords by registered mail and had not been received prior to this hearing. As the tenants amended their application late I am not prepared to hear or consider the amended portion of the tenants' application and that portion has been dismissed with leave to reapply. The hearing continued on the landlords' application for a Monetary Order.

### Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for unpaid rent and utilities?

### Background and Evidence

The parties agree that this tenancy started on September 01, 2013. The tenants were given the first month's rent free and started to pay rent of \$750.00 on October 01, 2013. This was a fixed term tenancy which was not due to expire until September 01, 2014. The tenants paid a security deposit of \$500.00 on September 01, 2013.

The landlord testifies that the tenants failed to pay rent for February, 2014 of \$750.00. The landlord testifies that a neighbour informed the landlord that the tenants moved from the rental unit on or about March 17, 2014. The landlords therefore seek to recover a prorated rent up to March 17, 2014 of \$411.29.

The landlord testifies that the tenants failed to pay utilities. The Hydro is documented on the tenancy agreement as not being included in the tenants rent. The landlord testifies that this unit is in a building that was a warehouse and as such the alarm and security lights are connected to the tenants' metre. The landlord testifies that the hydro bill that came in was \$425.26. This was for Hydro used between November 15, 2013 and December 17, 2013. A copy of the Hydro bill has been provided in evidence. The

landlord testifies that as the lights are connected to the hydro meter the landlords informed the tenants that they would reduce the hydro bill to \$250.00. The landlord testifies that a second hydro bill has just been received by the landlord but has not been provided in evidence or sent to the tenants with a written demand for payment.

The tenants agree that they do owe rent for February, 2014 of \$750.00. The tenants testify that they vacated the unit on February 26, 2014 and returned on February 28 to remove their couch and bed. The tenant testifies that they continued to access the unit in March as there were many vagrants in the area and the tenants wanted to make sure the unit was safe. The tenants testify that there was a flood in the unit on February 26 and they had contacted the landlord FD to inform him of this and that the tenants were no longer residing in the unit. The tenants dispute the landlords claim for rent for March.

The tenants dispute the landlords claim for utilities. The tenants testify that the landlord sent them the utility bill on December 26, 2013 and the tenants contacted the landlord to find out why the bill was so high for one month. The tenants' dispute that the landlords had informed them that anything else was hooked up to the tenants' hydro meter. The tenants testify that they contacted BC Hydro and were informed to turn off the breakers and then check to see if the meter was still running. If it was running then something else was using their Hydro. The tenants testify that they followed this advice and found the meter was still running so they contacted the landlord and were then told that the meter was hooked up to the alarm and security lights. The tenants testify that the security system had never worked and they could not see any lights so wondered if the meter was hooked up to something else.

The tenant testifies that they asked for a meeting with the landlords to discuss the hydro usage and for the landlord to put into writing an amount the tenants should pay for their own usage. However a confrontation took place between one of the landlords and the male tenant and no agreement was reached. The landlords then served the tenants with a One Month Notice to End Tenancy.

The tenant testifies that they have never paid more than \$120.00 bi-monthly for hydro in a unit this size. The tenant testifies the unit had a washer dryer however the dryer did not work and although there were electric heaters these did not work either. During the winter they had little or no heating.

The tenant CG testifies that when they moved in the hydro was discussed and the landlord said he did not know what was going on with the hydro but that he would look into it and get back to the tenants about it later on. However this did not happen.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent for February, 2014 of \$750.00; I refer the parties to s. 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenants do not dispute that this rent is owed to the landlord; consequently I uphold the landlords claim to recover **\$750.00** in unpaid rent for February, 2014.

With regard to the landlords claim for a loss of rent for March, 2014 of \$411.29 up to March 17, 2014. The landlord has a duty to mitigate any loss by re-renting the unit as quickly as possible. The landlord testifies that he did not re-rent the unit due to the tenants still residing in the unit and because some damage needed to be repaired to the walls. The tenants argue that they vacated the unit by February 28, 2014 and the unit had flooded on February 26, 2014. When one person's testimony contradicts that of the other then the person making the claim has the burden of proof. In this matter the landlord has the burden of proof and must provide corroborating evidence to show the date the tenants did vacate the rental unit, or that there was damage left in the unit

which prevented the landlord re-renting the unit. The landlord has provided insufficient evidence to show that the tenants continued to reside in the unit during March, 2014; however, the tenants have provided some documentary evidence in the form of email correspondence between the tenants and landlord concerning the flood that occurred in February, and these emails also indicate that the tenants had vacated the unit on February 28, 2014.

I am not satisfied that the landlords have met the burden of proof in this matter. In normal circumstances when a 10 Day Notice has been served upon the tenants, the landlord would be entitled to recover rent for the following month because if the tenants had given notice themselves during February, the earliest they could have ended the tenancy would have been the end of March. However, the landlord also served the tenants with a One Month notice, and the same rule does not apply in that case. The landlord had a full month to get the unit re-rented under s. 7(2) of the *Act* which refers to the landlords' duty to minimize the damage or loss. Consequently, the landlords' claim for a loss of rent for March is dismissed.

With regard to the landlords' claim for utilities, I will deal with the landlords' claim concerning the utility bill for \$425.26 which has been provided in evidence. I am not satisfied that the landlords have full knowledge of what portion of this hydro bill is for the tenants' usage. The landlords agreed to reduce their claim for hydro to \$250.00. As the landlords have not shown exactly how much of this bill relates to the tenants' usage, only I have limited the landlords' claim to **\$150.00** for this utility bill. The landlords are at liberty to file a new claim for any further utility bills when they have provided a copy of the bill to the tenants with a written demand for payment within 30 days. If any further bills then remain outstanding, the landlords may file a claim to recover an amount after deductions have been made for any usage outside of the unit.

As the landlords have been partially successful with their claim, I find the landlords are entitled to recover their filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$950.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court 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: March 25, 2014

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Residential Tenancy Branch

